

# TEXAS REGISTER

## IN THIS ISSUE

Volume 21, Number 11 February 9, 1996

Page 909-1007

### **Office of the Attorney General Requests for Opinions**

RQ-865.....	919
RQ-866.....	919

### **Proposed Sections**

#### **Texas Department of Licensing and Regulation**

##### **Auctioneers**

16 TAC §67.22, §67.81.....	921
----------------------------	-----

#### **Texas Racing Commission**

##### **Licenses for Pari-mutuel Racing**

16 TAC §305.41.....	921
16 TAC §305.70.....	922

##### **Officials and Rules of Horse Racing**

16 TAC §313.53.....	922
16 TAC §313.132.....	923
16 TAC §313.301.....	923
16 TAC §313.449.....	923

##### **Officials and Rules for Greyhound Racing**

16 TAC §315.36.....	924
---------------------	-----

##### **Veterinary Practices and Drug Testing**

16 TAC §319.111.....	924
----------------------	-----

##### **Pari-mutuel Wagering**

16 TAC §321.6.....	926
16 TAC §321.38.....	926
16 TAC §321.114.....	927
16 TAC §§321.204, 321.206-321.209.....	927
16 TAC §§321.232-321.235.....	929
16 TAC §321.272, §321.275.....	930

#### **Texas State Board of Examiners of Psychologists**

##### **Applications**

22 TAC §463.32.....	931
---------------------	-----

##### **Rules of Practice**

22 TAC §465.38.....	932
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TAC Titles Affected.....1003-1007

Contents Continued Inside



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 21 (1996) is cited as follows: 21 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "21 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 21 TexReg 3."

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

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using

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

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

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

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

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 26, April 9, July 12, and October 8, 1996). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.dd

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

The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

**Texas Department of Health**

**Chronically Ill and Disabled Children's Services Program**

25 TAC §38.6 ..... 933

**Shellfish Sanitation**

25 TAC §§241.1, 241.2, 241.4-241.29..... 934

**Texas Parks and Wildlife Department**

**Finance**

31 TAC §53.6 ..... 944

31 TAC §§53.11-53.13 ..... 944

31 TAC §53.18 ..... 945

31 TAC §53.21, §53.24 ..... 946

31 TAC §§53.22, 53.23, 53.25 ..... 946

31 TAC §53.35 ..... 946

31 TAC §53.41 ..... 947

31 TAC §53.42 ..... 947

**Law Enforcement**

31 TAC §§55.501, 55.503, 55.505 ..... 947

**Texas Department of Transportation**

**Contract Management**

43 TAC §§9.31-9.33, 9.36-9.38 ..... 948

**Withdrawn Sections**

**Texas State Board of Examiners of Psychologists**

**Applications**

22 TAC §463.32 ..... 951

**Rules of Practice**

22 TAC §465.38 ..... 951

**Texas Department of Health**

**Occupational Health**

25 TAC §295.217 ..... 951

**Texas Department of Insurance**

**Property and Casualty Insurance**

28 TAC §5.14011 ..... 951

**Texas Department of Human Services**

**Medicaid Eligibility**

40 TAC §15.433, §15.435 ..... 951

40 TAC §15.455, §15.465 ..... 952

40 TAC §15.500 ..... 952

40 TAC §15.610, §15.623 ..... 952

**Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification**

40 TAC §§19.1801-19.1807 ..... 952

40 TAC §19.1808, §19.1809 ..... 952

40 TAC §19.2701, §19.2702 ..... 952

**Cost Determination Process**

40 TAC §§20.101-20.111 ..... 952

**Reimbursement Methodology**

40 TAC §24.101 ..... 953

**Residential Care Program**

40 TAC §46.7001 ..... 953

40 TAC §46.7001, §46.7002 ..... 953

**Primary Home Care**

40 TAC §47.1901 ..... 953

40 TAC §47.2902, §47.2913 ..... 953

40 TAC §47.5902 ..... 953

**Community Care for Aged and Disabled**

40 TAC §48.2613, §48.2614 ..... 953

40 TAC §48.2918 ..... 954

40 TAC §48.6020, §48.6021 ..... 954

40 TAC §§48.9801, 48.9802, 48.9805, 48.9806, 48.9808, 48.9809, 48.9811, 48.9812 ..... 954

40 TAC §48.9805 ..... 954

**Day Activity and Health Services**

40 TAC §§50.6901, 50.6902, 50.6904-50.6907 ..... 954

**Emergency Response Services**

40 TAC §52.502, §52.504 ..... 954

**Adopted Sections**

**Texas Boll Weevil Eradication Foundation**

**Organic Cotton Regulations**

4 TAC §§195.1-195.5 ..... 955

## Texas Department of Health

### Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

25 TAC §§31.1-31.4 ..... 956

### Nutrition Services

25 TAC §§31.1-31.3 ..... 956

### Pharmacy Services

25 TAC §35.611 ..... 961

25 TAC §35.901 ..... 961

### Communicable Diseases

25 TAC §97.135 ..... 962

### Zoonosis Control

25 TAC §§169.22, 169.23, 169.25-169.29, 169.31, 169.33, 169.34 ..... 963

25 TAC §§169.62-169.65 ..... 966

25 TAC §169.65 ..... 966

### Food and Drug

25 TAC §229.444 ..... 966

### Occupational Health

25 TAC §§295.201-295.216, 295.18-295.220 ..... 968

## Texas Commission on Fire Protection

### Standards for Certification

37 TAC §421.3 ..... 968

### Fire Suppression

37 TAC §423.11 ..... 969

### Certified Training Facilities

37 TAC §§427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19 ..... 969

37 TAC §§427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19, 427.21 ..... 969

### Fees

37 TAC §437.3 ..... 969

37 TAC §437.17 ..... 970

### Examinations for Certification

37 TAC §439.15 ..... 970

## Texas Department of Human Services

### Primary Home Care

40 TAC §47.5901 ..... 971

### Day Activity and Health Services

40 TAC §50.6903 ..... 974

## Texas Rehabilitation Commission

### Memoranda of Understanding with Other State Agencies

40 TAC §115.4 ..... 975

## Texas Department of Transportation

### Design

43 TAC §§11.100-11.107 ..... 976

### Toll Projects

43 TAC §§27.20-27.26 ..... 976

43 TAC §§27.30-27.37 ..... 977

### Aviation

43 TAC §§30.203, 30.208-30.210 ..... 979

## Tables and Graphics Sections

Tables and Graphics ..... 981

## Open Meetings Sections

State Office of Administrative Hearings ..... 985

Texas Department of Agriculture ..... 985

The State Bar of Texas ..... 986

Texas Department of Commerce ..... 986

Comptroller of Public Accounts ..... 986

Texas State Board of Examiners of Professional Counselors ..... 986

State Employee Charitable Campaign ..... 988

Texas Ethics Commission ..... 988

Office of the Governor ..... 988

Texas Higher Education Coordinating Board ..... 989

Texas Department of Insurance ..... 989

Texas Department of Licensing and Regulation ..... 989

Texas Mental Health and Mental Retardation Board ..... 989

Texas Natural Resource Conservation Commission ..... 990

Polygraph Examiners Board ..... 991

Railroad Commission of Texas ..... 991

University of Houston System ..... 991

Texas Workers' Compensation Commission ..... 991

Regional Meetings ..... 992

**In Additions Sections**

**Texas Education Agency**

Notice of Availability of Elementary and Secondary Education Act..... 995

**Texas Environmental Awareness Network**

Notice of Monthly Meeting..... 995

**Texas Department of Health**

Correction of Error ..... 996

**Texas Department of Insurance**

Correction of Error ..... 996

Notices..... 996

Third Party Administrator Applications..... 996

**Texas Natural Resource Conservation Commission**

Applications for Waste Disposal Permits.....996

Notice of Opportunity to Comment on Permitting Actions.....997

**Public Utility Commission of Texas**

Correction of Error .....998

Notice of Application to Amend Certificate of Convenience and Necessity.....998

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27 .....998

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28 .....999

Public Notice.....999

**Texas Department of Transportation**

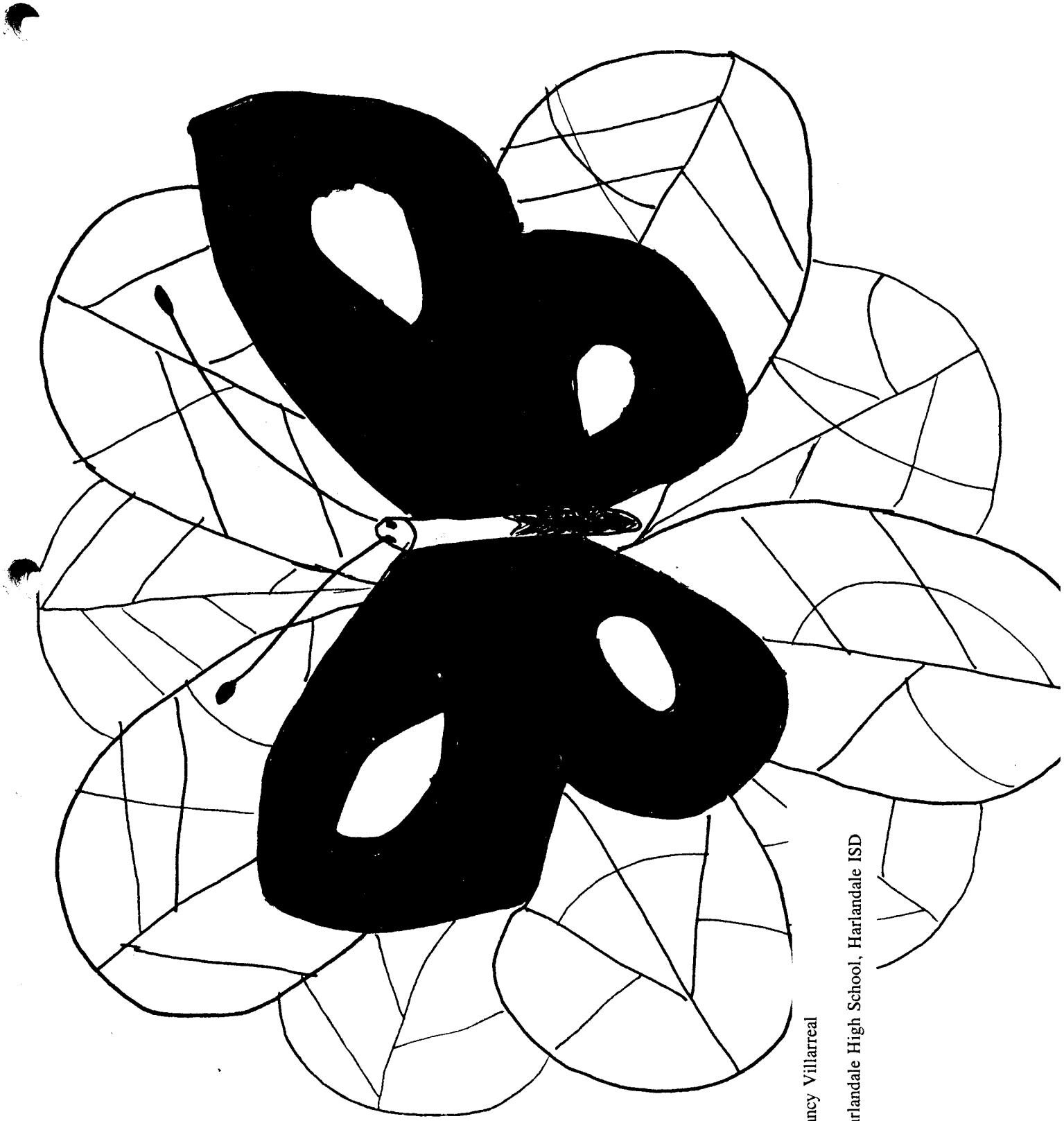
Requests for Proposals .....1000

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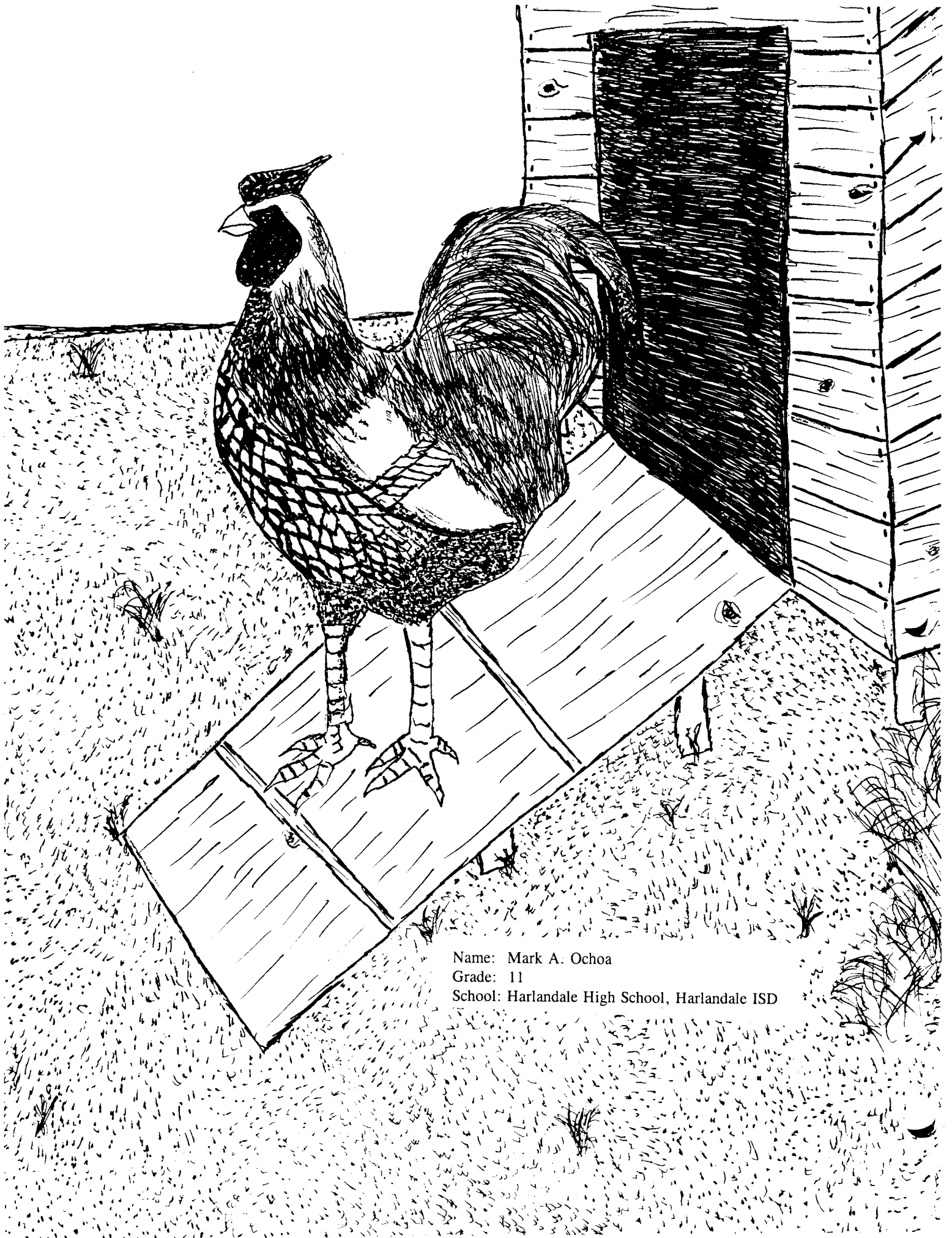
In the January 6, 1996, *Texas Register*, the incorrect date was printed on pages 821-889. The "January 6, 1996" line should have read "February 6, 1996".

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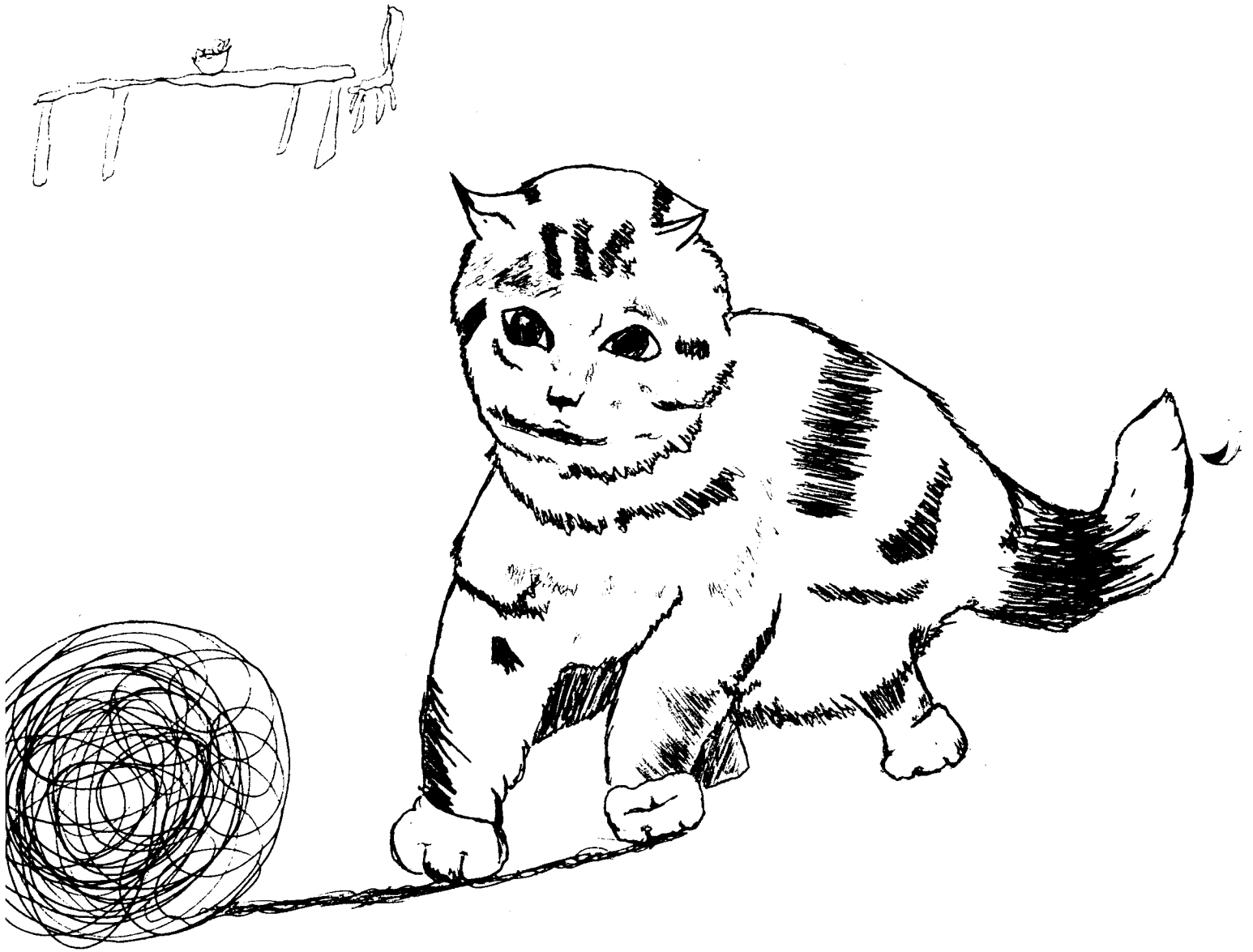
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# ATTORNEY GENERAL

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Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

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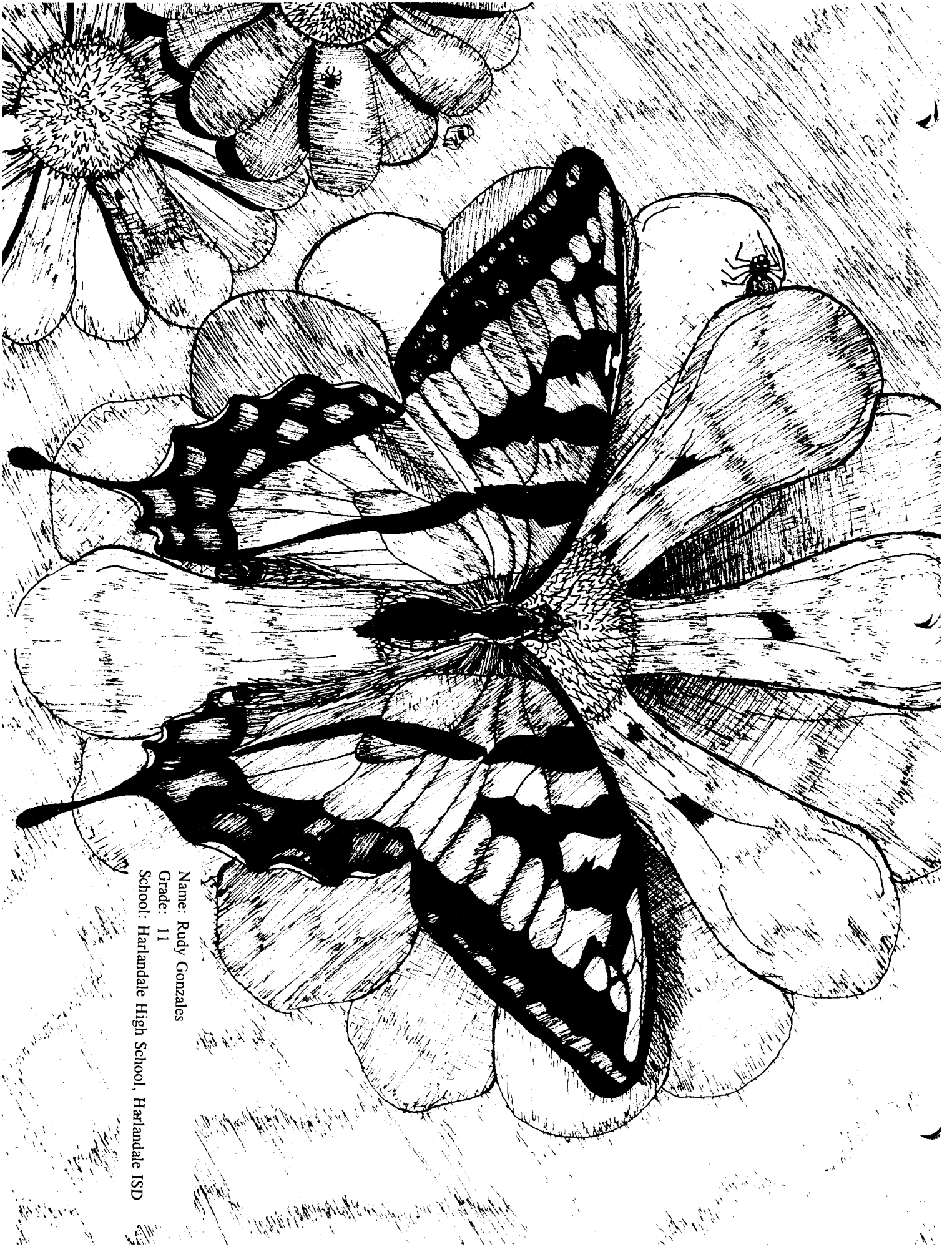
## Requests for Opinions

(RQ-865). Request from the Honorable David Sibley, Chair, Economic Development Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether a proposal by the City of San Antonio to contract for certain telecommunications services contravenes the provisions of subsection 3.251(d) of the Public Utility Regulatory Act.

(RQ-866). Request from James R. Wilson, Director, Texas Department of Public Safety, 5805 North Lamar Boulevard, Box 4087, Austin, Texas 78773-0001, concerning whether a parent or guardian who teaches a "home school" driver education course must be licensed under Texas Civil Statutes, Article 4413(29c) and related questions.

TRD-9601378





Name: Rudy Gonzales  
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# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 67. Auctioneers

##### • 16 TAC §67.22, §67.81

The Texas Department of Licensing and Regulation proposes amendments to §67.22 and §67.81, concerning Auctioneers. The amendment to §67.22 changes the amount of time a person who has passed the auctioneer examination has in which to get a license without being required to retake the examination from two years to 90 days. Section 67.81 increases the late renewal fee from \$25 to \$50 and increases the amount of time within which a late license can be renewed without retesting from 30 to 90 days.

The justification for raising the late fee is to make it the same as all other Department late fees and to make late renewal and possible holding of illegal auctions less attractive. The justification for changing the period of time during which an applicant may secure an auctioneer license after passing the examination from two years to 90 days is that auctioneers are required to know and comply with many laws dealing with taxes, deceptive trade, and other state and federal law concerning licenses to buy or sell various items. These laws and regulations can be changed at various times by the state legislature, the Congress, rulemaking by the Comptroller or various other agencies, and attorney general opinions. The public will be protected more effectively if the time when a license may be secured and the time knowledge is demonstrated are not widely separated.

Jimmy G. Martin, Manager, Consumer Protection Section of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect state government revenues will increase by \$250 per year, and that there will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more protection for the consumer because persons being licensed will be knowledgeable of current laws pertaining to auctioneering, taxes, and deceptive trade.

The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be an additional \$25 for late license renewal.

Comments on the proposal may be submitted to Jimmy G. Martin, Manager, Consumer Protection Section, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 8700, which authorize the department to license and regulate auctioneers.

No other statute, code or article is affected by this rule.

##### §67.22. License Requirements-Examinations.

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

(d) An applicant who passes an examination may be licensed up to **90 days** [two years] from the date on the grade notice sent by the department.

(e) (No change.)

##### §67.81. Fees-Renewal.

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

(c) A late fee of **\$50** [\$25] will be charged for renewal applications postmarked between midnight of the day a current license expires and midnight of the **90th** [30th] day after the expiration.

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

Issued in Austin, Texas, on January 31, 1996.

TRD-9601279 Jack W. Garrison  
Executive Director  
Texas Department of Licensing and Regulation

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 463-7357

## Part VIII. Texas Racing Commission

### Chapter 305. Licenses for Pari-mutuel Racing

#### Subchapter B. Individual Licenses

##### Specific Licensees

##### • 16 TAC §305.41

The Texas Racing Commission proposes an amendment to §305.41, concerning the licensing criteria for veterinarians. The amendment changes the qualifications to be licensed as a veterinarian.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the persons permitted to practice veterinary medicine on the grounds of licensed racetracks are qualified and competent. There will be no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §7.02, which authorizes the commission to adopt rules establishing the categories of licenses and the qualifications relating to each license category.

The proposed amendment implements Texas Civil Statutes, Article 179e.

**§305.41. Veterinarians.** To be eligible to be licensed by the commission as a veterinarian, an individual must show proof of current licensure in good standing [be licensed] by the Texas State Board of Veterinary Medical Examiners.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601303 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699

## Subchapter C. Racetrack Licenses

### General Provisions

#### • 16 TAC §305.70

The Texas Racing Commission proposes an amendment to §305.70, concerning the officials' fees. The amendment eliminates the differential in the compensation for stewards and commission veterinarians at pari-mutuel horse racetracks and raises the rate of compensation for those officials on race days.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing the section. There will be fiscal implications for state government, in that the amount the commission will receive in officials' fees will increase. However, because the officials' fee collected is calculated to directly offset the cost to the commission of compensating these officials, the net fiscal impact to the state will be neutral.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the officials supervising pari-mutuel horse racing will be of the highest quality. There will be fiscal implications for small businesses. A pari-mutuel horse racetrack will be required to pay an increased officials' fee for each day of racing. The exact amount of the increase will vary, depending on the number of race days conducted by the racetrack. A racetrack that conducts four days of live racing per week can expect to pay an officials' fee of \$3,3645 for each week of live racing, compared to the current fee of \$3,125. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §3.07, which authorizes the commission to impose a fee to offset the costs of compensating officials and to set the amount of the compensation by rule.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §305.70. Officials' Fee.

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

(c) The officials' fee at a horse racetrack is based on the actual cost to the commission of compensating the presiding steward and the commission veterinarians. The compensation for these officials is \$260 per race day and \$175 per non-race day.[:]

[(1) for the presiding steward, \$225 per race day, \$175 per non-race day, and \$100 per day of pre-meet licensing;

[(2) for the primary commission veterinarian, \$225 per race day and \$175 per non-race day; and

[(3) for the secondary commission veterinarian, \$200 per race day and \$175 per non-race day.]

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601304 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699

## Chapter 313. Officials and Rules of Horse Racing

### Subchapter A. Officials

#### Duties of Other Officials

#### • 16 TAC §313.53

The Texas Racing Commission proposes an amendment to §313.53, concerning the mutuel manager at a horse racetrack. The amendment authorizes the mutuel manager to designate an individual to serve in the mutuel manager's absence subject to the approval of the executive secretary.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the officials supervising pari-mutuel horse racing will be of the highest quality. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §313.53. Mutuel Manager.

(a) The mutuel manager shall supervise the operations of the pari-mutuel department of the association and its employees. The mutuel manager shall ensure the accuracy of the amounts in all pools and the amounts to be paid on winning wagers.

(b) The mutuel manager may designate a representative to serve in the mutuel manager's absence, subject to approval by the executive secretary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on January 30, 1996.

TRD-9601305 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699



## Subchapter B. Entries, Declarations, and Allowances

### Declarations and Scratches

#### • 16 TAC §313.132

The Texas Racing Commission proposes an amendment to §313.132, concerning scratch time at a horse racetrack. The amendment eliminates the requirement that a horse racetrack have a "scratch time".

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the patrons will have accurate information regarding the participants in a race, because late changes will be significantly reduced. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §313.132. *Scratch Time.*

(a) An association may [shall] designate a "scratch time" for each race day.

(b)-(d) (No change.)

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601306 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699



## Subchapter C. Claiming Races

#### • 16 TAC §313.301

The Texas Racing Commission proposes an amendment to §313.301, concerning claiming races at a horse racetrack. The amendment changes the criteria for claiming a horse.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the owning of race horses in Texas will be encouraged by increasing the number of people who are eligible to file claims for race horses. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §313.301. *Eligibility to Claim.*

(a) Except as otherwise provided by this section, in a claiming race, each horse is subject to be claimed for its entered price by:

(1) a licensed owner or lessee [who has a horse whose registration certificate is on file in the racing office at the current race meeting] or an authorized agent acting on behalf of the owner or lessee; or

(2) (No change.)

(b) (No change.)

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

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General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699



## Subchapter D. Running of the Race

### The Race

#### • 16 TAC §313.449

The Texas Racing Commission proposes an amendment to §313.449, concerning the official order of finish at a horse racetrack. The amendment clarifies the requirements for a horse to be included in the official order of finish.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing in Texas will be of the highest quality and integrity. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for con-

ducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§313.449. *Official Order of Finish.*

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

(c) Except in a stakes race where the published conditions expressly provide for payment of purse money through last place, a horse must carry its assigned weight across the finish line to be eligible to earn any portion of the purse or a designation in the official order of finish other than "did not finish".

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601308 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699

Chapter 315. Officials and Rules for Greyhound Racing

Subchapter A. Officials

Duties

• 16 TAC §315.36

The Texas Racing Commission proposes an amendment to §315.36, concerning the mutuel manager at a greyhound racetrack. The amendment authorizes the mutuel manager at a greyhound racetrack to designate an individual to serve in the mutuel manager's absence, subject to the approval of the executive secretary.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the officials supervising pari-mutuel greyhound racing will be of the highest quality. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§315.36. *Mutuel Manager.*

(a) The mutuel manager shall supervise the operations of the pari-mutuel department of the association and its employees. The mutuel manager shall ensure the accuracy of the amounts in all pools and the amounts to be paid on winning wagers.

(b) The mutuel manager may designate a representative to serve in the mutuel manager's absence, subject to approval by the executive secretary.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601309 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699

Chapter 319. Veterinary Practices and Drug Testing

Subchapter B. Treatment of Horses

• 16 TAC §319.111

The Texas Racing Commission proposes an amendment to §319.111, concerning the bleeder and furosemide (Lasix) program at race horses. The amendment streamlines and clarifies the requirements for designating a horse as a bleeder and for participating in the furosemide (Lasix) program.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing in Texas will be humane for race horses and that information provided to patrons will be accurate and reliable. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegally influencing of a race, including the use of medication.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.111. *Bleeders and Furosemide (Lasix) Program.*

(a) **Diagnosis of EIPH.** A bleeder is a horse that experiences Exercise Induced Pulmonary Hemorrhage (EIPH). The medical diagnosis of EIPH may be made only by a commission veterinarian or a practicing veterinarian holding a current license from the commission. A veterinarian who diagnoses an EIPH event in a horse participating in pari-mutuel racing in this state shall report the event to the commission veterinarian in a format prescribed by the commission. On receipt of the first report of a diagnosed EIPH event for a horse, the commission veterinarian shall certify the horse as a bleeder.

(b) **Admission to Furosemide (Lasix) Program.**

(1) A horse that has been certified as a bleeder in this state may be admitted to the furosemide (Lasix) program. To be admitted to the furosemide (Lasix) program, the trainer of the horse must file a request for the horse's admission to the program before the horse is entered in its next race. If a trainer



fails to request the horse's admission to the furosemide (Lasix) program before entry, the horse may not compete in the race with furosemide (Lasix).

(2) The trainer of a horse that was certified as a bleeder in another pari-mutuel racing jurisdiction and who competed with furosemide (Lasix) in its most recent start out-of-state is required to request the horse's admission to the furosemide (Lasix) program. The trainer must provide documentation satisfactory to the commission veterinarian that the horse was certified as a bleeder in another jurisdiction. The request that the horse be admitted to the furosemide (Lasix) program must be filed before the horse is entered in its next race. If a trainer fails to request the horse's admission to the furosemide (Lasix) program before entry, the horse may not be entered in the race.

(c) Administration of Furosemide (Lasix). Furosemide (Lasix) shall be administered to a horse in the furosemide (Lasix) program not later than four hours before the published post time for the race the horse is entered to run. The furosemide (Lasix) must be administered intravenously by a veterinarian licensed by the commission. The chief veterinarian shall periodically publish the permissible blood levels of furosemide (Lasix) in post-race specimens and shall post the levels at each licensed racetrack.

(d) Requirement to Use Furosemide (Lasix). A horse in the furosemide (Lasix) program in Texas must compete with furosemide (Lasix) until withdrawn from the program.

(e) Withdrawal from Furosemide (Lasix) Program.

(1) The chief veterinarian of the commission shall establish criteria for withdrawing a horse from the furosemide (Lasix) program and shall make those criteria available in the commission veterinarian's office at each racetrack.

(2) To withdraw a horse from the furosemide (Lasix) program, the trainer must apply to the commission veterinarian. The commission veterinarian shall require a signed medical statement from the trainer's regular practicing veterinarian that it is in the horse's best interest to be withdrawn from the furosemide (Lasix) program. The commission veterinarian may also request a record of past performances, a workout without furosemide (Lasix), a blood test at the time of the workout to confirm the absence of furosemide (Lasix), or a post-workout endoscopic examination. A withdrawal request and all accompanying information must be reviewed and approved by two commission veterinarians. The commission veterinarians must act on a withdrawal request no later than one week after the request is filed.

(3) A horse in the furosemide (Lasix) program may not compete without furosemide (Lasix) until its withdrawal from the program has been approved by the commission veterinarians. Withdrawal from the furosemide (Lasix) program does not prohibit a horse from subsequent readmission to the program in accordance with this section.

(f) Bleeders List.

(1) The commission veterinarian shall maintain a list of horses that have been certified as bleeders and a list of horses that have been admitted to the furosemide (Lasix) program.

(2) On receipt of a report of a diagnosed EIPH event, the commission veterinarian shall place the horse on the veterinarian's list. For the first diagnosed EIPH event, a horse shall be placed on the veterinarian's list and is not eligible to enter a race before the 10th day after the horse is placed on the list. For the second diagnosed EIPH event, a horse shall be placed on the veterinarian's list and is not eligible to enter a race before the 30th day after the date the horse is placed on the list. For the third diagnosed EIPH event, a horse shall be placed on the

veterinarian's list and is not eligible to enter a race before the 180th day after the date the horse is placed on the list. For the fourth diagnosed EIPH event, a horse is barred from pari-mutuel racing in this state.

(3) Notwithstanding the foregoing, if after reviewing a report of a diagnosed EIPH event the commission veterinarian determines additional days on the veterinarian's list are essential to the health and safety of the horse, the commission veterinarian may extend the number of days the horse is on the veterinarian's list. The commission veterinarian shall record the medical reasons for the additional days for review by the chief veterinarian.

(4) A horse that has not had a diagnosed EIPH event for a period of 365 consecutive days is considered a non-bleeder for purposes of this section.

[(a) A bleeder is a horse that demonstrates in the presence of the commission veterinarian visible external evidence of exercise-induced pulmonary hemorrhage or exhibits post-exercise hemorrhage in the trachea on endoscopic examination performed in the presence of the commission veterinarian.

[(b) The evidence of bleeding described in subsection (a) of this section must be exhibited not later than two hours after the last race on the day on which the horse raced or not later than two hours after the scheduled close of workouts at the racetrack at which the horse worked. The costs of conducting an endoscopic examination to determine whether a horse is a bleeder must be borne by the owner or trainer of the horse. A horse that is seen by the commission veterinarian to bleed during the running of a race or within two hours after the race or a workout must be certified as a bleeder by the commission veterinarian, on a form prescribed by the commission. The commission veterinarian shall maintain a list of all confirmed bleeding incidents in Texas and a copy of the list shall be posted in the racing secretary's office. The certification of a horse as a bleeder shall be noted on the horse's registration papers.

[(c) The trainer of a horse confirmed as a bleeder in Texas may request that the commission veterinarian admit the horse to the furosemide (Lasix) program for its next race. The request must be made on a form prescribed by the commission not later than one hour before post time for the first race on the day the horse is scheduled to race. A trainer shall declare at the time of entry whether the horse will race with or without furosemide (Lasix). The failure to make such a declaration or the making of a false declaration is grounds for disciplinary action by the stewards or the commission.

[(d) The commission veterinarian shall maintain a list of horses that have been admitted to the furosemide (Lasix) program. A horse admitted to the furosemide (Lasix) program must race with furosemide (Lasix) until:

[(1) the horse is withdrawn from the furosemide (Lasix) program at the request of the trainer; or

[(2) the horse races in another jurisdiction without the use of furosemide (Lasix).

[(e) Furosemide (Lasix) shall be administered to a horse that is admitted to the furosemide (Lasix) program not later than four hours before post time for each race in which the horse is to participate. The furosemide (Lasix) must be administered via intravenous injection by a veterinarian licensed by the commission. The dosage must be at least 150 mg (3cc) but not more than 250 mg (5cc).

[(f) If a trainer elects to withdraw a horse from the furosemide (Lasix) program, the trainer must withdraw the horse not later than one hour before post time for the first race on the day the horse is scheduled to race. The failure of a horse that has been admitted to the furosemide (Lasix) program to race on furosemide (Lasix)

without the proper notification to the commission veterinarian in grounds for disciplinary action by the commission or the stewards. A horse that races in another jurisdiction without furosemide (Lasix), except a jurisdiction that does not permit furosemide (Lasix), is automatically withdrawn from the furosemide (Lasix) program. A horse that is withdrawn from the furosemide (Lasix) program may not be readmitted to the furosemide (Lasix) program until the horse is reconfirmed as a bleeder by the commission veterinarian or in another racing jurisdiction in accordance with subsection (g) of this section.

[(g) A horse that has been confirmed as a bleeder in another racing jurisdiction may be admitted to the furosemide (Lasix) program in this state provided:

(1) the horse's last race was on furosemide (Lasix);

(2) the trainer declares at the time of entry that the horse will race with furosemide (Lasix);

(3) the trainer requests that the commission veterinarian admit the horse to the furosemide (Lasix) program not later than one hour before post time for the first race on the day the horse is scheduled to race; and

(4) the trainer provides written documentation satisfactory to the commission veterinarian that the horse was participating in the furosemide (Lasix) program in that jurisdiction.

[(h) For the first confirmed incident of bleeding in this state, the horse shall be placed on the veterinarian's list and is not eligible to enter in a race before the 10th day after the date the horse is placed on the list. For the second confirmed incident of bleeding in this state, the horse shall be placed on the veterinarian's list and is not eligible to enter in a race before the 30th day after the date the horse is placed on the list. For the third confirmed incident of bleeding in this state, the horse shall be placed on the veterinarian's list and is not eligible to enter in a race before the 180th day after the date the horse is placed on the list. For the fourth confirmed incident of bleeding in this state, the horse is barred from pari-mutuel racing in this state.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on January 30, 1996.

TRD-9601310 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699



## Chapter 321. Pari-mutuel Wagering

### Subchapter A. Regulation and Totalisator Operations

#### General Provisions

##### • 16 TAC §321.6

The Texas Racing Commission proposes an amendment to §321.6, concerning the pari-mutuel track report. The amendment modifies the type of information that must be provided by the racetrack to the commission regarding each day's wagering activity.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission will have complete information

for the effective regulation of pari-mutuel wagering. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §321.6. Pari-Mutuel Track Report.

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

(c) The association shall deliver a copy of the report to the commission on [not later than the 10th day after] the date of the performance for which the report was prepared. The report must contain:

- (1) total handle by gross pool;
- (2) total handle refunded by gross pool;
- (3) total handle by net gross pool;
- (4) total commissions derived from gross pools;
- (5) net amount of add-ins and carryovers to the payouts;
- (6) payouts attributable to wagers received;
- (7) breakage;
- (8) settlements to the sending track or receiving location; and
- (9) total handle from each receiving location.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601311 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699



#### Mutuel Tickets

##### • 16 TAC §321.38

The Texas Racing Commission proposes an amendment to §321.38, concerning the cancellation of mutuel tickets. The amendment modifies the circumstances under which a pari-mutuel wagering ticket may be canceled.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel wagering will be fair to the patrons, effectively regulated, and of the highest integrity. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §321.38. Cancellation of Tickets.

(a) An association may cancel a ticket before the ticket-issuing machines are locked if:[]

[(1)] the customer or pari-mutuel teller made an error in issuing the ticket and the patron requests that the ticket be canceled. For a ticket valued at more than \$250, the mutuel manager or the mutuel manager's designee must approve the cancellation. [before the patron leaves the teller's window and before the ticket-issuing machines are locked; or]

(b)[(2)] An association shall cancel a ticket if the stewards or racing judges order tickets to be canceled because of a scratch in a race.

(c) The association shall furnish a report of all canceled tickets to the commission at the end of the day.

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

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TRD-9601312 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699



### Subchapter B. Distribution of Pari-mutuel Pools

#### • 16 TAC §321.114

The Texas Racing Commission proposes an amendment to §321.114, concerning the prevention of start. The amendment clarifies the effect on the distribution of pari-mutuel pools if a race animal is prevented from starting in a race due to the failure of the starting gate or starting box to open properly.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel wagering will be fair to the patrons, effectively regulated, and of the highest integrity. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; and §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §321.114. Prevention of Start.

[(a)] Except as otherwise provided by these rules, in [In] a race, if the doors of a mechanically or electronically operated starting gate or box fail to open simultaneously with the other doors, thereby preventing a horse or greyhound from obtaining a fair start when the starter dispatches the field, that animal is considered scratched for pari-mutuel purposes only, and all wagers made on that animal shall be refunded. [this section applies to the distribution of the pari-mutuel pools.]

[(b)] If an animal is prevented from starting, the entire amount in the win, place, and show pools wagered on that animal shall be promptly refunded unless the animal finishes first, second, or third. In that case, the animal shall be considered a starter for all straight pools in which the animal earned a placing and a nonstarter in all other straight pools. There shall not be a refund if the animal is part of a coupled entry or field.

[(c)] If an animal is prevented from starting, the entire amount in the multiple pools wagered on that animal shall be promptly refunded unless the animal finishes first, second, or third. In that case, the animal shall be considered a starter for the multiple pool in which the animal earned a placing. There shall not be a refund if the animal is part of a coupled entry or mutuel field.

[(d)] If an animal is prevented from starting so that the total number of starters is less than five:

[(1)] if four animals of different betting interests leave the gate or box, the association may refund the entire amount wagered in the show pool;

[(2)] if two or three animals of different betting interests leave the gate or box, the association may refund the entire amount wagered in the show pool, the place pool, or both pools; and

[(3)] if fewer than two animals of different betting interests leave the gate or box, the association shall cancel the race and refund the entire amount wagered in the win, place, and show pools.]

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601313 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699



### Subchapter C. Simulcast Wagering

#### General Provisions

#### • 16 TAC §§321.204, 321.206-321.209

The Texas Racing Commission proposes amendments to §§321.204, 321.206-321.208 and new §321.209, concerning pari-mutuel wagering on simulcast races. The amendments modify the procedures approving certain simulcast races, modify the responsibilities of the sending and receiving racetracks, modify the emergency procedures for simulcasting, and establish the officials for supervising simulcasting.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of

enforcing the sections will be that pari-mutuel wagering on simulcast races will be fair to the patrons, cost-effective for the racetracks, effectively regulated, and of the highest integrity. There will be fiscal implications for small businesses. Because the amendment to §321.206 eliminates the requirement that the receiving racetrack provide a decoder, the receiving racetrack can expect to save approximately \$250 per month. There will be no economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments and new section are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering; and §11.011, which authorizes the commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The proposed amendments and new section implement Texas Civil Statutes, Article 179e.

#### §321.204. Approval of Wagering on Simulcast Races.

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

[(g) All graded races and stakes races with a purse of \$50,000 or more shall be considered of national or historic interest.]

#### §321.206. Duties of Receiving Location.

(a) An association that conducts pari-mutuel wagering on a simulcast race acts as a receiving location on those dates. The receiving location shall [provide]:

(1) provide adequate communication facilities, [which include all wire, radio, optical, satellite, or other electromagnetic systems and the modems, phone systems and other equipment used to transmit voice, data, and images] enabling pari-mutuel data transmissions and data communications between totalisator systems of the sending racetrack and the receiving location;

[(2) a voice communication system between the receiving location and the sending racetrack providing timely voice contact between the stewards or racing judges and the mutual departments at each racetrack; and]

(2)[(3)] if the receiving location participates [plans to participate] in common pools, provide a direct[, private] telephone line and a[, a teletype or] facsimile machine, or other means approved by the executive secretary, located [and a cellular telephone] in the mutuels area to transmit information to the sending racetrack in case of a system failure; and

(3) display the audio and video signals of the races being simulcast to the patrons.

[(b) Before the beginning of the transmission of the first performance of each day, the receiving location shall initiate a test program of its receiver, decoder, if applicable, and data communication to ensure proper operation of the system. If a test program run under this subsection is unsuccessful or indicates a malfunction of any component of the receiving system, the association may not conduct pari-mutuel wagering on a simulcast race until a successful test program is run.]

(b)[(c)] After each simulcast performance, the receiving location shall provide the reports of its pari-mutuel operations required by Subchapter A of this chapter (relating to Regulation and Totalisator Operations).

#### §321.207. Duties of Sending Racetrack.

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

(c) The sending racetrack shall provide transmission equipment of acceptable broadcast quality that does not interfere with the closed circuit TV system of the receiving location. The sending racetrack must have the capability to transmit and receive wagering information via a [dedicated] data circuit. If the sending racetrack plans to form common pools, the racetrack shall provide a direct[, private] telephone line and a[, a teletype or] facsimile machine, or other means approved by the executive secretary, located [and a cellular telephone] in the mutuels area to receive information from the receiving locations in case of a system failure.

[(d) Except as otherwise authorized by the commission, the simulcast shall be encrypted using a time displacement decoding algorithm encryption system or an equivalent encryption system approved by the commission.]

(d)[(e)] Unless otherwise permitted by the commission, a simulcast must contain in its video content:

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

(e)[(f)] At least 15 minutes before post time for the first race, [Before the beginning of the transmission of the first performance of each day,] the sending racetrack must be transmitting its signal to ensure proper operation of the transmission system. [shall initiate a test program of its transmitter, encryption equipment, and data communication to ensure proper operation of the system. If a test program run under this subsection is unsuccessful or indicates a malfunction of any component of the sending system, the association may not transmit any races until a successful test program is run.]

[(g) With the prior approval of the executive secretary, a sending racetrack may transmit and receive wagering information via a dial-up telephone line.]

#### §321.208. Emergency Procedures.

(a) If an association is unable to establish or to maintain the audio or video signal from the sending racetrack, the association shall immediately notify the sending racetrack of the lost signal and may continue to accept wagers while attempting to establish the signal.

(b) If the audio or video signal cannot be established or maintained, the association may continue to accept wagers on the signal provided:

(1) an announcement is made to the public informing them that due to technical difficulties the audio or video signal has been lost;

(2) the totalisator system licensee transmits the odds on the affected race to the video department to be displayed to the patrons; and

(3) the totalisator system licensee locks all wagering on the affected race no later than one minute before post to ensure the integrity and transfer of the wagering pools.

(c) If the sending racetrack loses the ability to transmit the audio or video signal, the sending racetrack:

(1) shall notify all receiving locations of the technical difficulties being experienced;

(2) may continue to accept wagers from the receiving locations on that day's races;

(3) may not accept wagers from the receiving locations for subsequent race days until the technical difficulties have been corrected.

[(a) An association may not accept wagers on a simulcast

race until the association is receiving both the audio and video signals from the sending racetrack.

[(b) If the association loses audio or video signal from the sending racetrack, the association shall immediately notify the sending racetrack of the lost signal.

[(c) If the audio or video signal is lost, the association shall establish telephone linkup with the sending racetrack's announcer and the association's public address system. The association may continue to accept wagers with the telephone linkup while attempting to reestablish the audio or video signal [or until post time for the simulcast race.

[(d) If both the audio and video signals are lost and the telephone linkup cannot be established, the association shall cease accepting wagers and immediately order a refund of all monies wagered into the pools for that race.]

*§321.209. Simulcasting Officials.* The mutuel manager or the mutuel manager's designee shall be present on association grounds at all times that the association is accepting wagers on simulcast races.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601314 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699

## Simulcasting at Horse Racetracks

### • 16 TAC §§321.232-321.235

The Texas Racing Commission proposes amendments to §§321.232-321.235, concerning pari-mutuel wagering on simulcast races at horse racetracks. The amendments change the requirements for negotiating with horsemen's representatives, allocation of purse and Texas-bred revenue, and prioritizing simulcast signals.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that pari-mutuel wagering on simulcast races will be fair to the patrons, cost-effective for the racetracks, effectively regulated, and of the highest integrity. There will be fiscal implications for small businesses. The amount available for purses from intrastate simulcasting may shift among tracks located in Texas, because under the amendments, Texas tracks will share equally in purse revenues. This may cause the amount of purse revenue available at receiving tracks to decrease, while the amount of purse revenue available at sending tracks may increase. However, this is merely a shift of revenue and the total amount available for purses statewide is not expected to decrease because of the amendments. There will be no economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering;

and §11.011, which authorizes the commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The proposed amendments implement Texas Civil Statutes, Article 179e.

### *§321.232. Negotiation With Horsemen.*

[(a)] An association shall negotiate with the organization [officially] recognized by the commission [horsemen's organization in this state] regarding the exporting and importing of simulcast signals during a live race meeting [all simulcasting].

[(b) If after a good faith effort the association and the organization cannot reach an agreement on simulcasting, either party may petition the commission to decide the issues in dispute. The decision of the commission is binding on all parties.]

### *§321.233. Purses.*

(a) For any intrastate simulcast signal, the percentage of the revenue from the simulcast race(s) dedicated to purses in this state shall be equal to or greater than the minimum percentage required by the Act, §6.08 and the sending racetrack and the receiving location shall divide that revenue equally among them.

(b) For any interstate simulcast signal [originating at a racetrack outside the state of Texas], an association shall provide that the percentage of the revenue from the simulcast race(s) dedicated to purses in this state shall be equal to or greater than the minimum percentage required by the Act, §6.08 unless a lesser amount is permitted by the officially recognized horsemen's organization in this state or by the commission. If the maximum net total takeout is reduced as a result of a common pool or the election by the association(s), the revenue for purses required under this subsection may be reduced by no more than on a pro-rata basis with that of the association's commission.

(c) (No change.)

### *§321.234. Allocation of Purses and Funds for Texas Bred Incentive Programs.*

(a) The funds derived by an association from a simulcast that are dedicated to purses and the Texas Bred Incentive programs shall be allocated among the various breeds of animals in a manner determined by the association, subject to the approval of the commission [that is agreed to by the official breed registries and the association]. On request by the commission, the association shall provide documentation, formulae, or other evidence to support its proposed allocation of funds.

[(b) If after a good faith effort the association and the appropriate registries cannot reach an agreement on simulcasting, any party may petition the commission to decide the issues in dispute. The decision of the commission is binding on all parties.]

(b)[(c)] An association shall set aside for the Texas Bred Incentive program at least 10% of the gross amount paid by an out-of-state receiving location to receive simulcasts of the association's races. An association shall allocate funds set aside under this subsection to the various breed registries in accordance with subsection (a) of this section. A breed registry shall distribute funds received under this subsection in the same manner as funds received pursuant to the Act. §6.08(f).

### *§321.235. Priority of Signals.*

(a) Intra-state simulcasting.

(1) A Class 1 or 2 racetrack may offer pari-mutuel wagering on a simulcast signal from any Texas racetrack that is conducting live races.

(2) During a live race meeting, a Class 3 or 4 racetrack may offer pari-mutuel wagering on a simulcast signal from any Texas racetrack that is conducting live races.

[(a) A Class 1 racetrack may offer wagering only on a race simulcast from another Class 1 Texas racetrack on dates when such a signal is made available pursuant to a contract between the sending track and receiving location and approved by the commission. If no such signal is available, a Class 1 racetrack may provide wagering on simulcast races originating from other racetracks in Texas or another jurisdiction, subject to the approval of the commission.]

(b) Interstate simulcasting.

(1) A Class 1 or 2 racetrack may offer pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the commission provided the Class 1 or 2 racetrack also offers all available simulcast races originating in Texas on that day.

(2) During a live race meeting, a Class 3 or 4 racetrack may offer pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the commission, provided:

(A) the Class 3 or 4 racetrack also offers all available simulcast races originating in Texas on that day; and

(B) each Class 1 racetrack conducting live races on that day agrees to the receipt of the out-of-state signal.

(c) A simulcast authorized by this section is subject to the commission's rules relating to the approval of simulcasting.

[(b) A Class 2 racetrack may offer wagering only on a race simulcast from Class 1 Texas racetrack on dates when such a signal is made available pursuant to a contract between the sending track and receiving location and approved by the commission. If no such signal is available, a Class 2 racetrack may offer wagering only on a race simulcast from another Class 2 Texas racetrack on dates when such a signal is made available pursuant to a contract between the sending track and receiving location and approved by the commission. If no such signal is available, a Class 2 racetrack may provide wagering on races originating in another jurisdiction, subject to the approval of the commission.

[(c) A Class 3 or 4 racetrack may not conduct a simulcast race meeting. A Class 3 or 4 racetrack may conduct wagering on simulcast races on dates when live racing is conducted at the racetrack only on races simulcast from a Class 1 Texas racetrack. If no such signal is available, a Class 3 or 4 racetrack may provide wagering on simulcast races originating at any racetrack in Texas or another jurisdiction, subject to the approval of the commission.

[(d) At any time that a Class 1 racetrack is conducting live races, any other Class 1 or 2 racetrack may receive the simulcast signal from the Class 1 racetrack conducting live races and conduct pari-mutuel wagering on the simulcast races, subject to the provisions of §321.205 (relating to Simulcasting Contract) and §321.232 (relating to Negotiation with Horsemen).]

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601315 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 833-6699

## Common Pool Wagering

### • 16 TAC §321.272, §321.275

The Texas Racing Commission proposes amendments to §321.272 and §321.275, concerning common pooling of pari-mutuel wagers on simulcast races. The amendments change the requirements for transmitting wagering data for common pools between the sending and receiving racetracks and for filing the report on the common pool.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing the sections.

Ms. Carter also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that pari-mutuel wagering on simulcast races will be fair to the patrons, cost-effective for the racetracks, effectively regulated, and of the highest integrity. There will be no fiscal implications for small businesses. There will be no economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted on or before March 11, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering; and §11.011, which authorizes the commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The proposed amendments implement Texas Civil Statutes, Article 179e.

#### §321.272. Formation of Common Pool.

(a) Wagering data shall be transmitted through a method authorized by this subsection, in the following order of preference:

- (1) via a [dedicated] data circuit;
- [(2) via a dial back-up;]
- (2)[(3)] via [teletype or] facsimile; or
- (3)[(4)] by voice.

(b)-(c) (No change.)

§321.275. Report to Commission. An association participating in a common pool shall submit to the commission a report on the pool on [not later than the tenth day after] the date of the performance for which the pool was formed. The report shall contain:

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

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601316 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 833-6699



## TITLE 22. EXAMINING BOARDS

### Part XXI. Texas State Board of Examiners of Psychologists

#### Chapter 463. Applications

##### • 22 TAC §463.32

The Texas State Board of Examiners of Psychologists proposes new §463.32, concerning Specialist in School Psychology. The new rule is being proposed in order to define what an individual must do to obtain a license as a Specialist in School Psychology. The new rule sets forth training and examination requirements for applicants for this license. The rule also defines what individuals are eligible for grandparenting into the license and how temporary licenses can be obtained to provide psychological services in the public schools.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect, the cost to the Agency to implement this license is approximately \$39,000 for fiscal year 1996 and \$25,000 for fiscal year 1997 and every year thereafter. However, the 74th Legislature did not provide the Agency with appropriation authority to cover this cost. The revenue generated by application fees and renewal fees collected from these individuals would more than offset the anticipated costs. The Agency estimates the revenue would increase by \$60,000 in fiscal year 1996 and by \$30,000 in fiscal year 1997 and every year thereafter. The Agency anticipates no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the protection of the health and welfare of the citizens of Texas, in particular the children who attend public schools in Texas, by ensuring that individuals who provide psychological services in the public schools meet certain minimum requirements and are subject to the requirements and regulations of the agency. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section will be in direct proportion to the cost of application fees, plus the costs of taking and passing the examinations required for licensure as set forth by the Educational Testing Service and in §473.2 of the Board's rules, as well as the fees for annual renewal of the license.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The new rule is proposed under Texas Civil Statutes, Article 4512c, Section 26, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§463.32. *Licensed Specialist in School Psychology.* Section 21.003(b), Education Code, authorizes the Board to set rules for a Licensed Specialist in School Psychology. This license replaces the school psychologist and associate school psychologist certificates previously issued by the Texas Education Agency for providers of school psychological services. For definitions, see §465.38 of this title (relating to Psychological Services in the Schools).

(1) Training Qualifications. Candidates for Licensure as a Specialist in School Psychology with a currently valid National Certified School Psychologist (NCSP) certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training qualifications. Other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, and have at least 60 graduate level semester credit hours, no more than 12 of which may be internship. A

graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework and internship as follows:

(A) Psychological Foundations—minimum one course in each of the following:

- (i) biological bases of behavior
- (ii) human learning
- (iii) social bases of behavior
- (iv) multi-cultural bases of behavior
- (v) child or adolescent development
- (vi) psychopathology or exceptionalities

(B) Research or Statistics—minimum one course

(C) Educational Foundations—minimum one course in each of the following:

- (i) instructional design
- (ii) organization and operation of schools

(D) Assessment—minimum one course in each of the following:

- (i) psychoeducational assessment
- (ii) emotional or behavioral or cultural assessment

(E) Interventions—minimum one course in each of the following:

- (i) counseling
- (ii) behavior management
- (iii) consultation

(F) Professional Issues and Ethics—minimum one course

(G) Practicum (including assessment) —minimum one course

(H) Internship or experience—minimum 1,200 hours, of which 600 must be in a public school. The internship or experience in the public school must be supervised by an individual qualified in accordance with §465.38 of this title (relating to Psychological Services in the Schools). Internship or experience which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, nor is under Board disciplinary order, may be considered for Specialist in School Psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and may be obtained in not less than one or more than two academic years. The title Specialist in School Psychology "Intern" or "Trainee" is to be used during this time. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. Experiences must include assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(2) Examinations. Candidates for licensure as a Specialist in School Psychology must take and pass the Board's Jurisprudence Exam. Candidates must also take the national School Psychology Examination administered by the Educational Testing Service and obtain at least the current cut-off score for the NCSP.

(3) Additional Requirements. In addition to the requirements of subparagraphs (1) and (2) of this section, candidates for licensure as a Specialist in School Psychology must meet the requirements imposed under §11(d) of the Psychologists' Certification and Licensing Act.

(4) Temporary Licenses. Individuals from another jurisdiction who meet the requirements as set forth in §15A of the Psychologists' Certification and Licensing Act may apply to the Board for a temporary license to offer psychological services in the public schools if they meet all the requirements for temporary licensure as a licensed specialist in school psychology as set forth in §463.5 of this title (relating to Application File Requirements). This license is valid for a period not to exceed one academic year.

(5) Grandparenting Provision for the Licensed Specialist in School Psychology.

(A) Grandparenting Time Period. A person who, on or after September 1, 1992, but before September 1, 1996, was providing psychological services in a public school of this state and was also credentialed by this Board, or the National School Psychologists' Certification Board, or the Texas Education Agency as a school psychologist or associate school psychologist is entitled to a license as a Licensed Specialist in School Psychology under §26 of the Psychologists' Certification and Licensing Act, without examination, if the person applies to the Board for the license before September 1, 1997. Persons who qualify for Grandparenting may continue to practice under their present certification or license until they obtain the Specialist in School Psychology license, with September 1, 1997 being the final date to apply.

(B) Application Requirements. A completed application for grandparenting licensure as a specialist in school psychology includes:

- (i) an application and required fee;
- (ii) two current passport pictures of the applicant;
- (iii) verification sent directly to the Board from the school district superintendent or his/her administrative designee that the applicant provided psychological services in the district during the period set forth in subparagraph A of this paragraph.
- (iv) verification sent directly to this Board from the credentialing agency of the applicant's certification/licensure as set forth in subparagraph A of this paragraph. Any individual who holds either a temporary, intermediate or one year certificate issued by the Texas Education Agency must produce proof that their deficiency plans have been completed by September 1, 1997 to qualify for a license under this paragraph.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on January 29, 1996.

TRD-9601264  
Rebecca E. Forkner  
Executive Director  
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 305-7700



## Chapter 465. Rules of Practice

### • 22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes new §465.38, concerning Psychological Services in the Schools. The new rule is being proposed in order to define the type and scope of practice permitted by individuals who provide psychological services in the public school systems of Texas as Licensed Specialists in School Psychology, as well as the minimum level of competency that all practitioners must possess in order to obtain licensure under the section.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect, the cost to the Agency to implement this license is approximately \$39,000 for fiscal year 1996 and \$25,000 for fiscal year 1997 and every year thereafter. However, the 74th Legislature did not provide the Agency with appropriation authority to cover this cost. The revenue generated by application fees and renewal fees collected from these individuals would more than offset the anticipated costs. The Agency estimates the revenue would increase by \$60,000 in fiscal year 1996 and by \$30,000 in fiscal year 1997 and every year thereafter. The Agency anticipates no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the protection of the health and welfare of the citizens of Texas, in particular the children who attend public schools in Texas, by ensuring that individuals who provide psychological services in the public schools meet certain minimum requirements and are subject to the requirements and regulations of the agency. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section will be negligible.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The new rule is proposed under Texas Civil Statutes, Article 4512c, Section 26, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§465.38. *Psychological Services in the Schools.* This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) Definition. The Specialist in School Psychology license is for provision of school psychological services specifically in the public schools of this state. A Licensed Specialist in School Psychology means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.



(2) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include Licensed Specialists in School Psychology, interns or trainees as defined in §463.32 of this title (relating to Specialist in School Psychology) and individuals holding a Temporary License issued by this Board to provide such services under §463.32 of this title (relating to Specialist in School Psychology). Nothing in this rule prohibits public schools from retaining licensed psychologists and licensed psychological associates who are not licensed specialists in school psychology to provide psychological services, other than school psychology, in their areas of competency.

(3) Supervision. Direct systematic, face-to-face supervision must be provided to Licensed Specialists in School Psychology for a period of one academic year following the internship. Individuals licensed under the grandparenting provisions of §463.32 of this title (relating to Licensed Specialist in School Psychology) are exempt from this requirement. Any Licensed Specialist in School Psychology must be supervised when providing psychological services outside his or her area of training and supervised experience. Nothing in this rule applies to administrative supervision of psychology personnel within the public schools, often done by non-psychologists, in job functions involving, but not limited to, attendance, time management, completion of assignments, or adherence to school policies and procedures.

(4) Supervisor Qualifications. Supervision must be provided by a Licensed Specialist in School Psychology with a minimum of three years experience providing psychological services in the public schools.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601265      Rebecca E. Forkner  
Executive Director  
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 305-7700

◆      ◆      ◆  
**TITLE 25. HEALTH SERVICES**  
**Part I. Texas Department of Health**  
**Chapter 38. Chronically Ill and Disabled**  
**Children's Services Program**

• 25 TAC §38.6

The Texas Department of Health (department) proposes an amendment to §38.6, relating to providers for the Chronically Ill and Disabled Children's Services Program (CIDC). Increasing service costs, without increases in general revenue funding, have necessitated review of all aspects of CIDC service delivery and client eligibility. Currently, CIDC providers also must be Texas Medicaid providers. The proposed amendment to §38.6 would authorize CIDC to enroll as providers those drug manufacturers and pharmacies affiliated with disease-specific nonprofit associations that can demonstrate their ability to provide medications to Texas CIDC clients in a timely manner and at a savings in cost to the program.

Debra Stabeno, Associate Commissioner for Health Care Delivery, has determined that for the first five-year period the section, as proposed, is in effect, there will be fiscal implications as a result of enforcing or administering the section. The effect on state government is estimated to be a reduction in cost of \$10,000 per fiscal year (FY) for FYs 1996 through 2000. There are no anticipated fiscal implications for local governments.

Ms. Stabeno also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the amendment will be to reduce costs to CIDC for drugs purchased for clients. There will be no effect on small businesses or persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments on the proposed amendment may be submitted to Susan C. Penfield, M. D., Director, Children's Health Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179, (512) 458-7111, Extension 3104. Public comments will be accepted for 30 days following the publication of the proposal in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §35.004, which allows the Board of Health (board) to adopt rules for the selection of providers; and under Health and Safety Code, §12.001(b), which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment will affect Health and Safety Code, Chapter 35.

§38.6. Providers.

(a) General requirements for participation. The Chronically Ill and Disabled Children's Services (CIDC) Act, Health and Safety Code, §35.004, provides the Texas Board of Health (board) with the authority to approve the physicians, dentists, podiatrists, facilities, specialty centers, and other providers to participate in the CIDC Program according to criteria and procedures adopted by the Texas Board of Health.

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

(6) Except as provided in subsection (h) of this section, all [All] types of providers who are qualified to enroll in the Title XIX Medicaid Program must participate as Medicaid providers in order for the client to utilize Medicaid coverage. The CIDC Program will not pay a provider for any service that could have been reimbursed by Medicaid.

(7) (No change.)

(b)-(g) (No change.)

(h) Drug manufacturers and disease-specific nonprofit association pharmacies. In order to make quality drugs available to CIDC clients at the best available prices, and in accordance with CIDC reimbursement policies, the CIDC Program will approve as CIDC providers drug manufacturers or disease-specific nonprofit association pharmacies which otherwise would be ineligible for enrollment under subsection (a)(6) of this section. To be approved as a provider under this section, a drug manufacturer or a pharmacy affiliated with a national disease-specific nonprofit association must document:

(1) its capacity to supply CIDC clients in Texas with drugs in a timely, dependable manner; and

(2) its ability to supply drugs to CIDC clients in Texas at a lower cost, including any applicable shipping charges, than is available from providers enrolled under subsection (a)(6) of this section.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601237      Susan K. Steeg  
General Counsel  
Texas Department of Health

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 458-7111



## Chapter 241. Shellfish Sanitation

### Texas Crab Meat

#### • 25 TAC §§241.1, 241.2, 241.4-241.29

The Texas Department of Health (department) proposes amendments to §§241.1, 241.2, and 241.4-241.29, concerning Texas crab meat. The sections cover definitions; grounds and arrangements; sanitary controls; water supplies, storage areas, processing of crabs, maintenance and cleaning; records and supervision. The amendments will update and clarify the existing rules and will implement the statutory changes adopted by the 73rd Legislature. The amendments add new definitions and update existing definitions; establish new standards for the processing and distribution of crab meat; and establish new licensing and enforcement procedures.

Richard E. Thompson, director, Seafood Safety Division, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government will occur only as a result of enforced administrative penalties. There will be no fiscal implications to local government.

Mr. Thompson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better assurance that crab meat processed in or imported into Texas will be free of disease or other health hazards transmissible by these products. There is no anticipated economic cost to persons or small businesses who are required to comply with the sections. Cost will only occur as a result of administrative penalties assessed against crabmeat businesses who do not comply. There will be no effect in local employment.

Comments on the proposal may be submitted to Richard E. Thompson, R.S., Director, Seafood Safety Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0215. Comments will be accepted for 30 days from the date of publication of this proposal. Public hearings to receive comments on the proposed amendments will be held on Tuesday, February 27, 1996, at 7:00 p.m. at the Bauer Exhibit Building at the fairgrounds on County Road 101, Port Lavaca, Texas, and on Wednesday, February 28, 1996, at 7:00 p.m. at the auditorium in the classroom laboratory building, Pelican Island Campus, Texas A&M University, Galveston, Texas.

The amendments are proposed under the Texas Health and Safety Code, §436.12 and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

The amendments affect Texas Health and Safety Code, §436.12.

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

**Approved**—Acceptable to the commissioner of health and the Seafood Safety Division [Division of Shellfish Sanitation Control].

**Crab meat**—The edible meat of steamed or cooked crabs, without [other] processing other than picking, packing and chilling.

**Department [(TDH)]**—The Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, or its successor.

**[Division of Shellfish Sanitation Control (DSSC)]**—The division of the TDH to which responsibility for regulating the processing, packing, and shipping of crab meat is delegated.]

**Durable material**—Material with the ability to exist for several years without significant deterioration and able to withstand normal daily use associated with crab meat processing operations.

**License**—A numbered document issued by the SSD [DSSC] which authorizes a licensee [person] to process crab meat for sale.

**Licensee**—A processor who has complied with all regulations established by the SSD and has obtained a license. A licensee may be an individual, partnership, corporation, association, or other legal entity.

**License number**—The number assigned by the SSD [DSSC] to each licensed crab dealer which consists of a one to five digit number preceded by the two letter state abbreviation and followed by the one or two letter symbol designating the type of operation licensed (C—picking and packing; CP—picking, packing, and pasteurizing).

**Licensing**—The issuing by the SSD [DSSC] of a numbered document to operate that indicates compliance with these sections.

**[Person**—An individual, partnership, corporation, association or other legal entity.]

**Potable water**—A public or private water source which is safe and suitable for drinking by humans.

**Processor**—A licensee [person] who cooks, backs, [and] picks [crabs], [and] packs and may pasteurize crab meat.

**Seafood Safety Division (SSD)**—The division of the department to which responsibility for regulating the processing, packing, and shipping of crab meat is delegated.

**Sewage**—Primarily organic and biodegradable or decomposable and generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

**Sewer**—An artificial, usually subterranean, conduit to carry off sewage and sometimes surface water.

**Sewerage**—The removal and disposal of sewage and surface water by sewers.

**Water closet**—A toilet bowl and its accessories surrounded by walls or partitions.

#### §241.2. Licensing and Enforcement Procedures.

(a) No crab meat shall be offered for sale for food in the State of Texas unless the crab meat has been processed and packaged in compliance with these sections or obtained from sources outside the state accepted by the Texas Department of Health (department) [TDH]. If obtained from sources outside of the state, the crab meat shall originate from a crab meat processor currently licensed by the appropriate state or other government authority. Crab meat obtained from sources other than those outlined in this section shall be considered unfit for human consumption. No one [person] shall engage in the processing and packing of crab meat for sale without having complied with these sections. No one [person] shall engage in any activity requiring a license under these sections without having applied for and obtained a numbered license from the commissioner. A license shall automatically be invalid if there is a 5.0% or more change in shares of company stock owned by any company board member.

(b) Prior to beginning construction of a new crab meat plant, or major remodeling of an existing crab meat plant, (which includes, but is not limited to: any process new to that particular plant; any change of product flow; or any enlarging of the plant structure); complete, legible plans showing the floor plan of the building, with dimensions drawn to scale, location of equipment, doors, floor drains, etc., and written, complete operational procedures for all phases of the activity, including flow of the product, shall be submitted to the Seafood Safety Division (SSD) [TDH's Division of Shellfish Sanitation Control (DSSC)] for review and approval. Additional plans of the entire premises shall be required showing all structures, as well as, all water wells and septic systems with related distances and a statement of specifications as to type, sizes, design, date installed, etc. Plans shall be submitted no less than 30 days prior to initiating a new process or beginning construction. No operations shall be conducted while any inside plant construction or any other construction which has the potential to contaminate the product is occurring. A legibly written or typed application on forms provided by the department [DSSC] must be filed with the SSD [DSSC] before any crab meat processing begins each license year.

(c) The application for a license must be accompanied by a letter from the appropriate state agency, authorized agent, or designated representative, as defined in the Health and Safety Code, Chapter 366, which states that the water supply is potable and the sewage disposal system is working properly.

(1) For new construction, where the letter can not be submitted with the application, it must be submitted after the water supply connection is made and the sewage system is installed or the connection to an existing sewage system is made, the water supply and sewage system are inspected, and before the license will be issued.

(2) For licensed locations where the crab meat activities are of a continuing nature, a letter concerning a public water supply and/or public sewage system shall be acceptable for a period not to exceed five years from the date of the letter.

(3) For licensed locations where the crab meat activities are of a continuing nature, a letter concerning a private water supply and/or private sewage system shall be acceptable for a period not to exceed three years from the date of the letter.

(4) A copy of the original letter may be submitted with the new application required each year.

(5) If changes in activities increase the demand for water supply or the loading on the sewage system, if any construction or maintenance is required on the water supply or the sewage system or if any problems are observed or detected with the water supply or the sewage system, a new letter will be required.

(d) The application for a license must be accompanied by acceptable sample results from at least one water sample from the water supply collected during the thirty day period immediately prior to the date on the application.

(e) The application for a license must be accompanied by a written statement of the procedure the applicant will use to determine the SELL BY date for crab meat packed and shipped from the location listed in the application, if the applicant proposes to use a SELL BY date.

(f) A license and unique number shall be issued by the commissioner only after an inspection of the plant by an authorized agent has revealed that the plant and past operational procedures [operations] are in compliance with these sections.

(g)[(c)] The inspection of a previously licensed plant which has exhibited operational problems or violations of the operational requirements of these sections or had a license revoked shall not be conducted until written, complete operational procedures for all phases of the activity, including flow of the product, have been submitted to the SSD [DSSC] for review and approval. An application may be rejected and a license denied based on past [a history of] failure to comply with the requirements of these sections.

(h) [(d)] Crab meat processing at the plant shall not begin until the commissioner has issued the Crab Meat Processing License for that location [license issued by the commissioner has been received and posted at the plant]. Each license shall expire automatically at 11:59 p.m. the last day of February following the date of issue. Licenses shall not be transferable.

(i)[(e)] After a license is issued, unannounced inspections shall be conducted at any time the SSD [DSSC] has reason to believe the plant may be in operation or that crab meat may be stored on the premises and at such frequency as may be necessary to assure that adequate operational and sanitary conditions are maintained [and shall be conducted a minimum of three times each six months]. All crab meat at a licensed location shall be considered the responsibility of the licensed dealer at that location, for the purposes of this undesignated head. A copy of the completed

inspection form listing written descriptions of the violations observed, along with any necessary explanation, shall be provided by an authorized agent of the department [TDH] to the most responsible individual present at the firm at the conclusion of the inspection. Any violation of the same requirement found on a consecutive inspection may result in license suspension [revocation] in accordance with subsection (j) [(f)] of this section.

(j)[(f)] The SSD [DSSC] may initiate procedures to suspend or revoke a license as follows.

(1) The procedures[, including the opportunity for a hearing prior to revocation,] shall be in accordance with Texas Health and Safety Code, §436.114, and the provisions of the Administrative Procedure [and Texas Register] Act, the Government Code, Chapter 2001 [Texas Civil Statutes, Article 6252-13a], and the department's [TDH] formal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(2) The grounds for suspension or revocation shall be either one [or more] of the following:

(A) inspection results indicate unsatisfactory conditions in the plant or the existence of a public health hazard; or

(B) the license holder or representative refuses to allow an inspection or otherwise interferes with an [the] authorized [TDH] agent of the department in the performance of his or her duties.

(k) A licensee whose license has been suspended may not process any crab meat for a period determined by the commissioner, not to exceed 60 days after the date of signing of the final order of suspension.

(l) [(g)] A licensee [person] whose license has been suspended [revoked] shall not process any crab meat until the SSD [DSSC] is satisfied that all necessary corrections have been made. A suspension will not be rescinded [new license shall not be issued] until an inspection establishes that the firm has corrected all violations which resulted in the suspension and is in full compliance with all applicable criteria of these sections. [A person whose license has been revoked shall not apply for a new license until 30 days after the date of signing of the final order of revocation.]

(m) A license may be revoked for any of the reasons outlined in subsection (j) of this section or for either of the following:

(1) the violations initiating a suspension fail to be corrected within the time frame established; or

(2) the license has been suspended more than twice.

(n) A licensee whose license has been revoked shall not apply for a new license for 180 days or before the next licensing period, whichever is longer, after the date of signing of the final order of revocation. When the department contemplates suspension or revocation, the license holder shall be afforded the opportunity for a hearing. Notice of the contemplated action shall be given to the license holder by personal service or certified mail, return receipt requested. If no request for a hearing is received by the director, within 14 days of personal service or the date of receipt, the department may proceed to take the action set out in the notice.

(o) When the department determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with Texas Health and Safety Code, §436.114, the Administrative Procedures Act, the Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(p) The seriousness of violations shall be categorized by one of the following severity levels. The examples following the severity levels are neither exhaustive nor controlling. They reflect only the seriousness of the violation and not the intent of the violator, the history of the violator, the amount necessary to deter future violations, or efforts to correct the violation.

(1) Severity Level V—violations that are of minor public health significance. The following are examples of severity level V violations:

(A) failure to keep premises clean and have adequate drainage;

(B) failure to clean/maintain floors, walls, or ceilings;

(C) failure to provide adequate and properly shielded lighting;

(D) failure to post hand washing signs at hand washing stations; and

(E) failure to restrict pickers from the packing room and all unauthorized persons from processing areas when operating.

(2) Severity Level IV—Violations that are of more than minor significance, or if left uncorrected, could result in more serious violations. The following are examples of severity level IV violations:

(A) failure to provide or use storage for employee clothing or personal articles;

(B) failure to have clean, maintained, adequately drained floor;

(C) failure to provide adequate heating/cooling/ventilation;

(D) failure to provide adequate quantity of water to facility;

(E) failure to provide hand washing stations with soap, sanitary towels, and/or waste receptacles with proper lids;

(F) failure to properly construct, locate, maintain, and/or keep clean all non-food contact surfaces;

(G) failure to provide detergents, approved sanitizers, brushes, and/or test kit to properly clean and sanitize the facility;

(H) failure to properly store and/or keep single service containers clean;

(I) failure to maintain frozen crab meat at 0 degrees Fahrenheit or less;

(J) failure to require employees to wear clean outer garments, impermeable finger cots; to store properly; to wear proper hair restraints;

(K) failure to promptly remove crab scrap or other accumulation; and

(L) failure to meet code and/or install water disposal correctly or have adequate drainage where operations discharge water.

(3) Severity Level III—Violations that are significant and which, if not corrected, could threaten public health. The following are examples of severity level III violations:

(A) failure to exclude insects, rodents, vermin, or any other animals;

(B) failure to provide hot and cold water at each sink/lavatory;

(C) failure to protect plumbing from backflow, backsiphonage, and/or cross contamination;

(D) failure to have toilets clean, repaired, or have self-closing doors;

(E) failure to properly use, store, separate, and/or label poisonous/toxic materials;

(F) failure to properly construct, locate, clean, and/or maintain food contact surfaces;

(G) failure to provide a temperature measuring device in each refrigeration unit;

(H) failure to wash/sanitize employees hands and/or exhibit good hygienic practice;

(I) failure to restrict any personnel with infections from participating in crab meat processing operations; and

(J) failure to maintain complete and accurate records.

(4) Severity Level II—Violations that have a significant adverse impact on public health. The following are examples of severity level II violations:

(A) failure to separate operations by partition, space, or time;

(B) failure to provide adequate refrigeration units;

(C) failure to clean and sanitize food contact surfaces effectively and within required time frame;

(D) failure to label crab meat or properly complete label;

(E) failure to protect crab meat from contamination;

(F) failure to pack into containers with a valid license number for that location; comply with label requirements; to use proper date;

(G) failure to promptly pick, pack, pasteurize, and/or protect the crab meat; and

(H) failure to have responsible, effective, or designated person as supervisor.

(5) Severity Level I—Violations that are most significant and create an imminent hazard to public health. The following are examples of severity level I violations:

(A) failure to cease operations when location/plant is flooded;

(B) failure to protect the water supply from contamination;

(C) failure to install sewage disposal system properly; maintain or meet code; be adequate;

(D) failure to maintain crab meat at the proper temperature;

(E) failure to keep product from becoming contaminated;

(F) failure to cool packed product to 45 degrees Fahrenheit within two hours of delivery to the packing room;

(G) failure to maintain packed product at 40 degrees Fahrenheit or less during storage or to cover in ice; and

(H) failure to provide sanitary ice and/or properly protect it.

(q) The department may impose differing levels of penalties for different severity level violations and different persons.

(1) Administrative penalties shall be imposed for Severity Level I, II and III violations. Administrative penalties shall be considered for Severity Level IV and V violations when they are combined with those of higher severity level(s) or for repeated violations which could have been prevented by corrective action and for which the license holder did not take effective corrective action.

(2) Tables IA and IB show the base administrative penalties.

FIGURE 2: 25 TAC §241.2(q)(2)

FIGURE 3: 25 TAC §241.2(q)(2)

(3) Adjustments to the values in Tables IA and IB in paragraph (2) of this subsection may be made for the presence or absence of the following factors:

(A) prompt identification and reporting;

(B) corrective action to prevent recurrence;

(C) compliance history;

(D) prior notice of similar event; and

(E) multiple occurrences.

(4) The penalty may be in an amount not to exceed \$25,000 a day for each violation for a person who violates the Health and Safety Code, or this chapter, or an order. Each day a violation continues may be considered a separate violation for the purposes of penalty assessment.

(r) The department may offer a license holder the opportunity to attend a settlement conference to discuss with the department, or a division thereof, methods and schedules for correcting the violation(s) or to show compliance with applicable provisions of the Health and Safety Code, this chapter, license conditions, and any orders of the department issued thereunder, or discuss both such topics. The department's Office of General Counsel may conduct settlement negotiations.

(s) Notice of any settlement conference shall be sent by personal service or certified mail, return receipt requested. A settlement conference is not a prerequisite for the action to be taken under subsections (o), (p), or (q) of this section.

(t)[(h) ] By acceptance of a license, the holder agrees to save, hold harmless, and indemnify the State of Texas, the department [TDH], and its employees against any and all liability, claims or losses for property damage or personal injury which result in whole or in part from the license holder's activities. The State of Texas shall not be held liable for financial losses incurred by the crab fishermen, plant supervisors, or plant owners due to failure of the crab industry, condemnation of crab meat, loss of crab meat, or other reasons.

#### §241.4. Plant Location, Grounds, and Arrangements.

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

(d) The backing room or area shall be adjacent to the cooking and cooling rooms and shall be physically separated from the live crab and cooking areas to prevent live crabs from entering the backing area. Where a crab rinsing [washer] machine is utilized, it shall be located in the backing room. Entrance doors shall be provided to both the cooking and backing areas of the plant so that cooking and backing personnel can enter without passing through other processing areas of the plant. Cooking and backing personnel shall confine themselves to their particular area so as to retard cross-contamination of the cooked crab meat.

(e)-(g) (No change.)

(h) The waste product cool room shall be used to hold backing and picking room crab waste prior to disposal. This room shall be cleaned and disinfected each day of use.

(i) All cooking, backing, picking, packing, and pasteurizing of crab meat in a picking or pasteurizing plant shall be conducted under one roof. All processing areas for one plant shall be directly connected and shall be under one roof to eliminate contamination potentials.

(j) Crab bait shall not be allowed to create sanitation or nuisance problems in or near the crab meat plant at any time.

(k) Processing and packing facilities shall be located so that they will not be subjected to flooding by ordinary high tides. If plant floors are flooded, all operations shall be discontinued and the SSD [Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC)] shall immediately be notified of the flooding. No operations may occur until waters have receded and the building is thoroughly cleaned and sanitized, and the facilities have been inspected by an authorized agent of the department [TDH].

(l)-(p) (No change.)

(q) Because picking and packing operations occur in separate areas, a delivery opening [window], shelf, or counter shall be provided so that pickers do not enter the packing area. The delivery opening [window] area shall be equipped with a shelf or surface constructed of smooth, corrosion resistant, easily cleanable, durable materials which can be effectively sanitized. The shelf shall drain toward the picking room and, if necessary, be curbed on the packing room side.

(r)-(s) (No change.)

#### §241.5. Floors, Walls, and Ceilings.

(a) Floors shall be constructed of smooth, easily cleanable, corrosion resistant, impervious, durable material.

(b) (No change.)

(c) The interior surfaces of rooms shall be smooth, washable, easily cleanable, corrosion resistant, impervious, constructed of durable material, white-colored, and shall be kept clean and in good repair. The interior surfaces shall be constructed and maintained to prevent contamination of the crab meat during holding or processing.

#### §241.6. Insect and Vermin Control Measures.

(a) (No change.)

(b) Insects, rodents, and other vermin, or evidence of their infestation, shall not be present inside any building which is associated with the licensed location.

(c) Necessary external and internal insect and vermin control measures shall be used, and such measures shall be in compliance with all state and federal rules. The use of insecticides and rodenticides shall be permitted only under such precautions and restrictions as will prevent the contamination of the crab meat or packing materials with illegal residues, and will cause no health hazards to employees.

#### §241.7. Lighting.

(a) Safe and adequate lighting shall be provided in all areas. A minimum of 50 foot candles, verified by an authorized agent, shall be required at product level in all processing areas.

(b) (No change.)

#### §241.8. Heating, Cooling, and Ventilation.

(a) (No change.)

(b) Processors shall have their backing area cooled with mechanical refrigeration adequate to maintain the air temperature at 85 degrees Fahrenheit or less.

(c)[(b)] Processors shall have their picking and packing areas cooled with mechanical refrigeration adequate to maintain the internal air temperature at 72 degrees Fahrenheit or less.

(d)[(c)] Each processing room or area shall be equipped with an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location not to be more than six feet off the floor.

#### §241.9. Water Supply.

(a) Water used in any activity at a licensed location shall be from a potable supply. [Potable water shall be from a safe source, and protected from contamination, and the water supply

system shall be constructed, maintained, and operated according to applicable state laws and this undesignated head. All water distribution systems shall be designed and constructed so as to provide a minimum residual pressure of 20 pounds per square inch under peak demand conditions. Under normal operating conditions, minimum pressures should not be less than 35 pounds per square inch in the distribution system.]

(b) (No change.)

(c) Water of at least 110 degrees Fahrenheit [Hot and cold water] shall be provided through a mixing valve at each compartment of every three compartment sink and at each hand washing lavatory.

(d) Water wells shall be so located that there will be no danger of pollution from flooding under normal conditions or from insanitary surroundings, such as, privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites, or abandoned and improperly sealed wells.

(e) Well sites shall not be within 50 feet of a tile or concrete sanitary sewer, septic tank, or storm sewer, or within 150 feet of a septic tank perforated drainfield, absorption bed, evapotranspiration bed or underground fuel storage tank.

(f) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(g) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites or lands irrigated by sewerage plant effluent.

(h) Livestock shall not be allowed within 50 feet of water supply wells.

(i) Abandoned water wells in the area of a proposed source shall be plugged and sealed properly to prevent possible contamination of freshwater strata.

(j) A sanitary control easement covering that portion of the lands within 150 feet of the well location shall be secured from all such property owners and recorded in the deed records at the county courthouse for all completed wells dug after the effective date of these sections.

(k) A concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the well head.

(l) Wellheads and pump bases shall be sealed by the use of gaskets or sealing compounds and, as applicable, properly vented to prevent the possibility of contamination of the well water.

(m) Upon completion of a new well, or after an existing well has been reworked, the well shall be disinfected and unused for at least six hours. After the water containing chlorine is completely flushed from the well, prior to placing the well in service, samples of water shall be collected and submitted for bacteriological analysis until three successive samples collected on separate days shall be free of coliform organisms.

(n) A suitable raw water sampling cock shall be provided on the discharge pipe of each well pump.

(o) Mechanical disinfection facilities capable of maintaining a free chlorine residual of 0.2-0.5 parts per million shall be provided with the point of injection prior to the hydropneumatic pressure tank or shall be ahead of the water storage reservoir(s), if a storage reservoir is provided. A test kit must be provided and available for testing the chlorine residual of the potable water.

[(p) The use of disinfectants other than hypochlorination with mechanical injection shall be considered on a case-by-case basis. Hypochlorination solution containers and pumps shall be housed and locked to protect them from adverse weather conditions and vandalism.

[(q) All hydropneumatic tanks shall be located wholly above grade and shall be of steel construction with welded seams.

[(1) Metal thickness for hydropneumatic tanks shall be sufficient to provide at least a minimum of 1/8 inch corrosion allowance and to withstand the highest expected working pressures with a four to one factor of safety.

[(2) All hydropneumatic tanks shall be provided with a pressure release device and an easily readable pressure gauge.

[(3) The tank size shall be large enough to maintain 35 pounds per square inch working pressure to the farthest end of the distribution system and large enough to provide adequate disinfection contact time as reflected by negative confluent and/or coliform monthly sample results. The tank size shall not be less than 82 gallons.]

[(d)[(r)] At least one sample of water taken from a [the] distribution system which includes a private well shall be submitted to an approved laboratory each month for bacteriological analysis. Any coliform positive or confluent (TNTC) sample shall necessitate resampling the water within 24 hours of receiving the result. All crab meat operations associated with the well shall immediately cease upon notification of a coliform positive result. The SSD [The Texas Department of Health's Division of Shellfish Sanitation Control (DSSC)] shall be notified upon receipt of a coliform positive sample result. If the resample result is coliform positive, the SSD [DSSC] shall be notified upon receipt of the result and the SSD [DSSC] shall determine the appropriate steps for disinfection and/or resampling. Crab meat processing operations shall not resume until a coliform negative result is obtained and the SSD is properly notified.

#### §241.10. Plumbing, Sewage, and Related Facilities.

(a) (No change.)

(b) Drainage outlets shall be constructed and maintained to prevent the possible entrance of insects and rodents. Floor drainage shall not be allowed to drain from the plant on top of the ground.

(c)[(b)] There shall be no cross connections between the approved pressure water supply and water from an unapproved source, and there shall be no fixtures or connections through which the approved pressure water supply might be contaminated by backsiphonage. Adequate devices approved by a regulatory agency shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where the air gap between the water supply inlet and the fixture's flood level rim is less than twice the diameter of the water system inlet. All submerged inlets including hoses attached to faucets shall be equipped with a backflow prevention device. If booster pumps are connected directly to the potable water supply, the pumps shall be equipped with a low pressure cutoff device or equivalent method to prevent backsiphonage.

(d)[(c)] Hand washing facilities shall be adequate in number and size for the number of employees, convenient to the work areas, and located so that the person responsible for supervision can readily observe that employees wash their hands before beginning work and after each interruption. There shall be at least one hand washing lavatory located in each of these areas: the backing area; the picking room; and the packing room. At least one hand washing lavatory shall be provided in each of these three areas for every 15 employees among the first 100 employees, and at least one hand washing lavatory for each 25 employees in excess of the first 100 employees.

(24 lineal inches of wash sink or 18 inches of a circular basin, when provided with water outlets for such space, will be considered equivalent to one lavatory.) Three compartment sinks shall not be used for hand washing, but may be used to sanitize the hands after washing them in a lavatory. There shall be at least one three compartment sink located in the picking room, and one in the packing room. A three compartment sink shall be provided in the picking room for every 20 pickers. There shall be at least one large basin sink in the backing room. These sinks shall be of adequate size to completely immerse and properly clean and sanitize equipment and utensils.

(e)[(d)] Hand washing lavatories and three-compartment sinks shall be provided with hot water of at least 110 [100] degrees Fahrenheit from either a controlled temperature source with a maximum temperature of 115 degrees Fahrenheit, or from a hot and cold mixing or combination faucet. Steam water mixing valves or steam water combination faucets shall not be acceptable.

(f)[(e)] A supply of hand cleaning soap or detergent shall be available at each hand washing lavatory [facility]. A container of bactericide for hand rinsing purposes shall be provided near each group of lavatories in the processing areas. A supply of disposable towels or a suitable hand drying device that provides heated air shall be conveniently located near each hand washing lavatory [facility]. Common towels shall be prohibited. Where disposable towels are used, easily cleanable waste receptacles, with covers, shall be conveniently located near the hand washing lavatories [facilities]. Hand washing signs, in languages understood by the employees, shall be posted in toilet rooms and near hand washing lavatories [facilities]. A hand washing lavatory shall be located immediately outside the toilet rooms so that hand washing can be readily observed. Hand washing lavatories [facilities], hand drying devices, and all related equipment [facilities] shall be kept clean and in good repair.

(g)[(f)] Water closets [Toilet facilities], in toilet rooms separate for each sex, shall be provided in all places of employment in accordance with the following table. The number of water closets [facilities] to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided. Where such single-occupancy rooms have more than one commode [toilet facility], only one such facility in each toilet room shall be counted for the purposes of the table due to the lack of partitions. The sewage disposal method shall not endanger the health of employees. Each water closet shall occupy a separate compartment with a door and walls or partitions between fixtures adequately high to assure privacy. Toilet room doors shall be tight fitting, self-closing, and not open directly into a processing area. Toilet rooms shall be kept clean and in good repair. A supply of toilet paper in a suitable holder shall be available in the toilet rooms. Air vents shall be screened or have self-closing louvers. A covered waste receptacle shall be provided in each toilet room.  
FIGURE 3: 25 TAC §241.10(g)

(h)[(g)] No drainpipes or wastepipes shall be located over food processing or storage areas, or over areas in which containers are stored or washed.

(i)[(h)] Sewage shall be discharged into an adequate sewerage system or shall be disposed of through other effective means. Where private sewerage systems are utilized, they shall be constructed and maintained according to state and local laws. Privies are not acceptable. The sewerage system shall be constructed and maintained in order that sewage will be inaccessible to flies or other insects, rodents, or other vermin, and the sewage shall not provide a source of contamination. All sewerage lines and floor drainage lines shall be separate and shall be trapped to prevent entrance of sewage into any portion of the plant.

§241.11. *Poisonous or Toxic Materials.*

(a) Only those poisonous or toxic materials necessary for plant operation, cleaning, sanitizing, insect or vermin control shall be present in the plant. Containers of poisonous or toxic materials shall be prominently labeled according to law for easy identification of contents and safely stored. Such materials shall be used only in accordance with label directions.

[(b) Poisonous or toxic materials not required for cleaning, sanitizing, insect or vermin control shall not be present in the plant.]

(b)[(c)] Each of the following categories of poisonous or toxic substances shall be separated from each other:

(1) pesticides; and

(2) cleaning agents, such as detergents and sanitizers, and chemicals, such as caustic acids or polishes.

(c)[(d)] Poisonous or toxic substances shall not be stored above or adjacent to crab meat processing or storage, food contact surfaces, utensils, or single service articles, except that this section does not prohibit conveniently located detergents or sanitizers in utensil or equipment cleaning areas.

(d)[(e)] Poisonous or toxic materials shall not be used in a way that contaminates the crab meat or food contact surfaces or in a way that constitutes a hazard to employees.

§241.12. *Construction of Utensils and Equipment.*

(a) All plant equipment and utensils shall be suitable for their intended use, so designed and of such durable material and workmanship as to be readily cleanable [and durable,] and shall be kept in good repair. The design, construction, and use of such equipment and utensils shall preclude the contamination of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment shall be installed and maintained to facilitate the cleaning thereof and of all adjacent areas.

(b) All utensils and equipment shall be designed and fabricated from smooth, corrosion resistant, safe, durable materials for[, durable under] conditions of normal use[,] and resistant to denting, buckling, pitting, chipping, and crazing. Unfinished and unpainted wood shall not be approved for use as food contact surfaces.

(c) (No change.)

(d) All utensils and equipment shall be subject to inspection for compliance by an agent of the SSD [DSSC] prior to licensing or initial use and shall be kept in good repair.

(e) (No change.)

(f) Equipment of new design necessitated by new processes shall be reviewed by an authorized agent of the SSD [DSSC] before it is put into operation.

§241.13. *Cooking, Cooling, and Storage Areas.*

(a)-(d) (No change.)

(e) Crates and/or baskets used in cookers shall be of corrosion resistant metal or other durable material approved by the department [Texas Department of Health] and shall be durable under the conditions of normal use. They shall be resistant to denting, buckling, pitting, chipping, and crazing. They shall have air gaps close enough to prevent spillage of crabs, and yet with as much space as possible to facilitate cooking and air penetration when cooling.

(f) Crates and/or baskets shall not be allowed to come in contact with the floor or other contaminated surfaces either while clean and empty and waiting to be used or while being used to hold

cooked crabs. Raised racks or other devices shall be provided to permit free air circulation and shall elevate the crab meat a minimum of four inches off the floor.

(g)-(h) (No change.)

(i) Cooked crabs shall be backed and rinsed [washed] immediately after cooking unless they are cooled to room temperature and placed under mechanical refrigeration at air temperatures of 45 degrees Fahrenheit or less within one hour of removal from the cooker. Refrigeration of unbacked cooked crabs shall not be allowed as a routine operation. Cooked crabs which are backed and rinsed [washed] immediately after cooking shall be placed under mechanical refrigeration and shall be maintained at air temperatures of 45 degrees Fahrenheit or less until picked. Coolers for cooked crabs or backed and rinsed [washed] crabs shall be capable of maintaining air temperatures of 45 degrees Fahrenheit or less at any time crabs are placed or stored in the cooler.

(j) (No change.)

§241.14. *Backing of Cooked Crabs.*

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

(d) Backing table tops shall be of corrosion resistant metal without butt joints or open seams. Backing table frames and legs shall be constructed of corrosion resistant, durable material. Spray nozzles used for rinsing the waste out of the backed crab shall be smooth and easily cleanable.

(e) Backed crabs shall be rinsed immediately after backing using [washed only under] sprayed water, and shall be immediately placed in receptacles of approved design. Backed crabs and the containers shall not be exposed to the drainage or splash from the rinse [wash].

(f)-(h) (No change.)

§241.15. *Picking of Crab Meat.*

(a) (No change.)

(b) Picking tables shall be made with frames and legs of corrosion resistant, durable material. Metal construction joints shall be made by welding and shall be ground to a smooth surface. Table top food contact surfaces shall be made without seams or butt joints. Table tops shall be made of type 302 and 304 stainless steel or its equivalent, number 4 finish or better on exposed surfaces, and 18 gauge or heavier. Construction and material may be of better quality than stated in this subsection. Construction shall be designed to avoid accumulation of organic material at the edge and underside of the table and all areas shall be easily cleanable. The tables shall be constructed to be graded to drain.

(c) If wall tables are used, the backs of the tables shall extend at least 24 inches upward and be of durable material at least equal to the table top.

(d)-(g) (No change.)

(h) Only small quantities of cooked crabs shall be removed from the refrigeration room at any one time to be delivered to the pickers to prevent undue warming of the crabs before and during picking. Condensation drip shall not come in contact with the cooked crabs.

(i) (No change.)

(j) Upon accumulating not more than six pounds of crab meat, each picker shall deliver the meat to the packing area to be weighed. [After each weighing, and before returning to work, the picker shall wash his/her hands and knife with hot water and detergent and then rinse them in a bactericide of approved strength.]



(k) After each weighing, and before returning to work, the picker shall wash his/her hands and knife with hot water and detergent and then rinse them in a bactericide of approved strength. A bactericide solution of chlorine shall be kept between 50 and 100 parts per million (ppm) concentration, while an iodine solution shall be kept between 25 and 50 ppm concentration.

(l)-(n) (No change.)

#### §241.16. Packing of Crab Meat.

(a) The packing area shall be equipped with a counter of rigid construction, surfaced with corrosion resistant metal or other impervious durable material with no open seams.

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

(f) A record of the quantity of meat picked by individuals may be kept in a ledger at the delivery opening [window area], or on a tally board, or by other sanitary methods.

(g)-(h) (No change.)

(i) The packing operations shall be scheduled and conducted to pack and chill the crab meat to an internal temperature of 45 degrees Fahrenheit or less within two hours of delivery to the packing area and further chilled to an internal temperature of 40 degrees Fahrenheit or less within four hours after picking. This four hour time frame is the maximum time allowed and shall not be exceeded [packing].

(j) [Picked crab meat shall be packed and cooled to an internal temperature of 40 degrees Fahrenheit or less within four hours after picking.] Storage temperatures shall be maintained at 34 degrees Fahrenheit to 40 degrees Fahrenheit.

(k) (No change.)

(l) The packing process and equipment shall not transmit contaminants or objectionable substances to the products. Containers shall conform to applicable food additive regulations and provide adequate protection from contamination. Condensation drip shall not come in contact with the cooked crabs.

(m)-(n) (No change.)

#### §241.17. Refrigeration of Crab Meat.

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

(c) Refrigeration rooms shall be large enough and constructed so that a full day's production, with ice, can be conveniently stored. Each room shall be equipped with an automatic temperature regulating control (thermostat) and an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location of the storage compartment. Condensation drip shall not come in contact with the cooked crabs.

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

(g) Fresh crab meat shall be held and transported by a licensed dealer or any distributor under mechanical refrigeration at air temperatures of 40 degrees Fahrenheit or less. Storage and shipping of sealed containers of fresh crab meat completely covered in wet ice is also required. Containers of fresh crab meat shall not be stored upside down.

(h) (No change.)

(i) Refrigeration and frozen storage compartments shall be equipped in compliance with this section. Mechanical refrigeration facilities shall be adequate in size and cooling capacity to properly refrigerate all crab meat on the premises to comply with the temperature requirements of this section.

(j) (No change.)

#### §241.18. Disposal of Crab Scrap.

(a) Suitable containers in accordance with §241.15 of this title (relating to Picking of Crab Meat) shall be provided in the backing and picking rooms for the collection of crab scrap. The containers shall be thoroughly cleaned and sanitized at the end of each day's operations. Containers shall be repaired or replaced when they can not be cleaned and sanitized properly.

(b) (No change.)

(c) Conveyances used to remove crab scrap from the plant shall be constructed to preclude spillage. These conveyances shall be cleaned and sanitized at the end of each day's operations.

(d) (No change.)

#### §241.19. Pasteurization of Crab Meat.

(a) (No change.)

(b) Recording and indicating thermometers shall be provided on all pasteurizing equipment, and shall serve as time and temperature controllers. The bulbs of both thermometers shall be located in such a place as to give a true representation of the operating temperature of the water bath. An authorized agent of the department [Texas Department of Health (TDH)] shall check the accuracy of both thermometers as installed and thereafter at least once each operating season. The recording thermometer chart must be at least a 24-hour chart, and shall be at least 12 inches in diameter.

(c)-(f) (No change.)

(g) The pasteurization unit shall not be operated without a recording thermometer chart in place, the pen in contact with the chart and an inked record being made of the operating time-temperature cycle. Any indication of falsification of a thermometer chart shall constitute a failure to comply with this section. A new chart shall be used for each day's operations and the code number or date of each batch shall be affixed to the chart for each pasteurizing cycle. A permanent file of the used thermometer charts shall be maintained by the pasteurizer and kept available for inspection by the department [TDH] for a period of one year. The following information shall be recorded within the confines of the pen markings after the pasteurization cycle has been completed:

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

(4) if the pasteurizer processes meat for someone else, the packer's name, address and license [or certification] number;

(5)-(7) (No change.)

(h)-(i) (No change.)

(j) Crab meat for pasteurization shall meet all of the requirements for fresh crab meat. The pasteurization process shall be conducted under the same roof as where the crab meat is packed.

(k) The containers of crab meat to be pasteurized shall be sealed as quickly as possible after the meat is picked[, except that when meat is being packed for pasteurization on other premises a covering of a type approved by the TDH shall be used].

(l) The sealed containers of crab meat to be pasteurized shall be placed under mechanical refrigeration at air temperatures of 40 degrees Fahrenheit or less immediately after packing [picking], unless they are to be pasteurized immediately after packing.

(m) Crab meat may be packed by one processor for another in containers furnished for that purpose by the latter, provided that all packing and pasteurizing shall be completed in the pasteuriza-

tion [packing] plant. In all instances the products processed under operations permitted by this paragraph shall meet the labeling requirements of this section.

(n) Crab meat for pasteurization shall be pasteurized within 24 hours of the time it is picked. The minimum pasteurization specifications shall be the raising of the internal temperature of the container of crab meat to 185 degrees Fahrenheit and holding at that temperature for at least one minute at the geometric center of a container approved by the department [TDH]. Each set of pasteurizing equipment shall be standardized so that the pasteurization treatment as described by this section can be obtained. The pasteurizer shall keep on file the standardization report, and his pasteurization procedure shall be performed in accordance with it.

(o) The containers of pasteurized crab meat shall be chilled by cooling to 100 degrees Fahrenheit within 50 minutes to allow refrigerated storage within one hour after processing. The procedure for chilling shall be standardized. Pasteurized containers of crab meat shall be refrigerated immediately after reaching 100 degrees Fahrenheit.

(p) Mechanically refrigerated [Refrigerated] storage shall be provided for the chilled pasteurized crab meat and shall maintain a storage temperature at or below 40 degrees Fahrenheit but above 32 degrees Fahrenheit. Pasteurized crab meat shall be transported under mechanical refrigeration between these same temperatures.

(q) The label used shall clearly identify the contents of the container as pasteurized crab meat. Whenever the term CRAB MEAT (or its equivalent) appears on the label, the word PASTEURIZED shall be used in [immediate] conjunction with it and in print of similar [equal] prominence.

(r) Each container of pasteurized crab meat shall be permanently and legibly identified with a code indicating the batch and the day of processing.

(s)-(t) (No change.)

(u) All containers of pasteurized crab meat shall have permanently recorded on the principal display panel, so as to be easily visible, the following information:

(1) the packer's or distributor's name;

(2) the packer's or distributor's address, including at least the city and state; and

(3) the one to five digit license number preceded by the two letter state abbreviation and followed by the one or two letter abbreviation for the type of operation the dealer is qualified to perform.

(v) Where the name and address of the distributor is used, it shall be preceded by the words PACKED FOR or DISTRIBUTED BY or followed by the word DISTRIBUTOR.

(w) The presence of any chemical, if any is allowed, and the net weight of the contents shall be permanently recorded on the container. The proper designation of the content of the container shall be required, (lump, special, claw, fingers, etc.).

(x) Such other matter pertinent to the public health as may be required by the department shall be recorded on the container.

(y) All required information shall be provided in a legible and indelible form, and shall be on the sidewall of the container unless the cover becomes an integral part of the container during the sealing process. All information, except the date, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container by the container printing company. All labeling is subject to review and approval by the SSD.

#### §241.20. General Maintenance and Cleanliness.

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

(d) No wild or domestic [animal] animals other than crabs to be processed shall be permitted in a crab meat processing plant or on the premises. Unauthorized persons shall be excluded from the plant.

#### §241.21. Cleaning and Sanitizing Equipment and Utensils.

(a)-(d) (No change.)

(e) Food contact surfaces of utensils and equipment used in the plant shall be cleaned and sanitized prior to use and following any interruption during which food contact surfaces may have become contaminated. The proper set up and use of a three compartment sink is necessary for proper washing and sanitizing. One end compartment of the three compartment sink shall be filled with hot water and cleanser or detergent and used for the cleaning of the utensils; the solution of water and cleanser or detergent shall be changed as frequently as necessary to assure thorough cleaning of all utensils. The middle compartment shall be kept free of standing water and used, first for rinsing the residue from the utensils before cleaning and second for rinsing the wash water from the utensils after cleaning. The other end compartment shall be used for bactericidal treatment of utensils. Chlorine, when used as a sanitizer, is most effective in cool, not hot, water. A free available chlorine level of 100 parts per million shall be maintained. A contact time of at least 15 seconds shall be used for sanitizing. A test kit must be provided and available for testing the chlorine residual of the potable water.

(f)-(h) (No change.)

#### §241.22. Single Service Containers.

(a) Containers for crab meat shall be clean; shall be constructed of non toxic metal, food grade plastic, glass, or other impervious, durable material; and shall be designed and fabricated so that the contents shall be protected from contamination during shipping and storage.

(b)-(d) (No change.)

#### §241.23. Labeling Fresh or Fresh Frozen Crab Meat.

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

(d) If the date is a SELL BY date, the method of determining that date shall be based on the date the crab meat is packed [and shall be approved by the Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC) before being used]. The proposed method must be submitted in writing to the SSD [DSSC] before being used. The sell by date shall be preceded by the words SELL BY or BEST WHEN SOLD BY.

(e) The presence of any chemical, if any is allowed, and the net weight of the contents shall be permanently recorded on the container. The proper designation of the content of the container shall be required, (lump, special, claw, fingers, etc.) and may be recorded on either the container sidewall or on the lid.

(f) Frozen crab meat shall be labeled as FROZEN, Individually Quick Frozen, or IQF, in print of similar [equal] prominence [immediately] adjacent to the words CRAB MEAT. The words [word] FROZEN, Individually Quick Frozen, or IQF, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container. Stamping shall not be allowed. Containers shall be marked as frozen prior to freezing.

(g) (No change.)

(h) Such other matter pertinent to the public health as may be required by the department [TDH] shall be recorded on the container.

(i) All required information shall be provided in a legible and indelible form, and shall be on the sidewall of the container unless the cover becomes an integral part of the container during the sealing process. All information, except the date, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container by the container printing company, unless, an adhesive label which has been approved by the SSD [DSSC] is used. Adhesive labels shall be durable and waterproof and shall not be used unless prior approval from the SSD [DSSC] is obtained. The request must be submitted in writing. All labeling is subject to review and approval by the SSD [DSSC].

#### §241.24. Ice.

(a) Ice shall be made [manufactured] at the establishment from potable water in a commercial machine which has been properly installed without any cross connections, or in another establishment approved by the appropriate regulatory agency. Plants purchasing crushed ice shall secure it from operators who handle, crush, and deliver it in a sanitary manner.

(b) All facilities and equipment employed in handling and/or preparing ice for use shall be used for no other purpose and shall be cleaned each day the plant is in operation. Ice shall be stored so that it does not contact unclean surfaces and shall be handled in such a manner that it will not be contaminated or exposed to contamination. No objects other than approved ice handling equipment shall come in contact with the ice or ice bin/container. Equipment used to handle ice shall be kept clean and shall be hung or stored in a protected and sanitary manner.

(c) Ice not made [manufactured] in the crab meat processing establishment shall be inspected upon receipt and rejected if not delivered in clean conveyances and protected from contamination.

(d) To prevent floor drainage contamination, ice storage areas shall be sealed by perimeter curbing, utilizing an elevated floor pad a minimum of four inches in height, or be contained within an ice bin of approved-type material. Painted wood surfaces are not approved for ice (food) contact surfaces.

#### §241.25. Records.

(a) Complete, accurate, and legible records in a form approved by the SSD [Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC)] shall be maintained by each licensed dealer. These reports shall be sufficient to document the dates of purchases of live crabs and the dates of purchases or shipments [sales] of packed crab meat so that a container of crab meat may be traced back to the specific cook lot in which it was processed. Specific quantities of live crabs purchased and shipments [sales] of crab meat shall be recorded in a permanently bound ledger book. Transaction records indicating origin of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the SSD [DSSC].

(b) Records covering purchases of live crabs and shipments [sales] of fresh crab meat shall be retained for a minimum of one year. Records covering purchases of live crabs and shipments [sales] of pasteurized or frozen crab meat shall be retained for at least two years or for a period of time that exceeds the shelf life of the product, if that is longer than two years.

(c) Records shall be made available for inspection upon verbal request by an agent of the department [TDH] during all normal working hours.

(d) All brands or trade names used on packages or containers holding crab meat shall be registered yearly at no charge with the SSD [DSSC].

#### §241.26. Employee Health.

(a) Persons infected by disease in a communicable form, or while a carrier of such disease, or while infected with boils, sores, infected wounds, or acute respiratory infection shall not work in a crab meat processing establishment in any capacity in which there is a likelihood of such persons contaminating the crab meat or crab meat contact surfaces with pathogenic organisms or transmitting diseases to other persons. Employees having boils, sores, wounds, or any other illness which may require the attention of a licensed medical doctor shall obtain a written explanation from a licensed medical doctor stating the employee is not contagious nor potentially hazardous to contaminate food or food contact surfaces and may return to work in a food processing establishment.

(b) (No change.)

(c) Upon an inquiry indicating the possibility of a communicable disease, the infected employee shall be excluded from the plant pending clearance by a licensed medical doctor. The employee shall obtain a written explanation from a licensed medical doctor stating the employee is not contagious nor potentially hazardous to contaminate food or food contact surfaces and may return to work in a food processing establishment.

(d) (No change.)

#### §241.27. Supervision.

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

(c) Supervisors, whether appointed or the plant owner, shall be required to successfully complete the state-accredited Food Protection Management Program as prescribed in §241.29(c) of this title (relating to Education and Training).

(d)[(c)] Unauthorized persons shall not be permitted in the processing areas during periods of operations.

#### §241.28. Personal Cleanliness.

(a) Employees handling cooked crabs or crab meat shall wear clean outer garments. These outer garments shall be rinsed or changed as necessary to be kept clean. Persons backing cooked crabs or picking and packing crab meat shall wear an apron of approved durable material.

(b) (No change.)

(c) Finger cots, gloves, and shields, if worn by pickers shall be sanitized as often as necessary or at least twice daily; shall be properly stored until used and shall be maintained in an intact, clean, and sanitary condition. Finger cots, gloves, and shields shall be made of an impermeable durable material [except where use of such materials would be inappropriate or incompatible with the work involved].

(d) (No change.)

(e) Employees shall not store clothing or other personal belongings, eat food, chew gum, drink beverages, use tobacco in any form, spit, or conduct any other unsanitary acts in areas:

(1) (No change.)

(2) where cooked crabs are being stored, backed, or rinsed [washed];

(3) (No change.)

(4) [in areas] that are being used for washing equipment or utensils.

(f)-(g) (No change.)

§241.29. *Education and Training.*

(a) (No change.)

(b) Employees shall receive instruction and training in proper food handling and personal hygiene and sanitary practices from supervisory personal or from other sources acceptable to the **Seafood Safety Division (SSD)** [Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC)].

(c) Crab meat plant owners and/or managers and supervisors shall be required to attend [a] **the Food Protection Management Program** [food protection management program], obtain a certificate of completion, and provide a copy to the **SSD [DSSC]** prior to obtaining a **Crab Meat Processing License** [shellfish certificate of compliance]. New supervisors shall be required to attend the course and obtain a certificate of completion before working as a supervisor in a plant and shall submit a copy of their certificate to the **SSD [DSSC]** within two weeks of employment. Training shall be accomplished by means of a training program consisting of 15 classroom hours and said program shall be accredited by the **department [TDH]**. Persons seeking certification may obtain said training from commercial or educational activities accredited by the **department [TDH]**. Certification shall be accomplished after all course requirements have been met and the applicants have demonstrated by means of an examination that they possess the required essential knowledge as determined by the health authority. Certificates shall be valid only for a period of three years. Prior to expiration, a person may attend a refresher course approved by the **department [TDH]** and obtain a certificate of completion or obtain a passing score on a national examination for certification of food service managers that meets requirements of the United States Food and Drug Administration and the **department [TDH]**. Copies of proof of either must be submitted to the **SSD [DSSC]** prior to expiration.

(d) (No change.)

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

Issued in Austin, Texas, on January 31, 1996.

TRD-9601326 Susan K. Steeg  
General Counsel  
Texas Department of Health

Earliest possible date of adoption: March 11, 1996

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

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part II. Texas Parks and Wildlife Department**

**Chapter 53. Finance**

**Commercial Fishing Licenses and Tags**

• **31 TAC §53.6**

The Texas Parks and Wildlife Commission proposes an amendment of §53.6, concerning Commercial Fishing Licenses and Tags.

The proposed amendment to §53.6 corrects an error in the fee amount for the nonresident sport oyster boat license. The amount of the nonresident sport oyster boat license is set in Parks and Wildlife Code §76.104 at \$40 or a fee determined by the Commission, whichever is more.

Dr. Bill Harvey, Department Regulatory Coordinator, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Harvey also has determined that for each year of the first five years the rule as proposed is in effect the public will benefit by consistency between statute and regulations.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Public comment may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, extension 4823.

The amendment is proposed under authority of Parks and Wildlife Code, §76.104, which sets the fee for nonresident sport oyster boat licenses.

Parks and Wildlife Code, §76.104 is affected by the proposed amendment.

§53.6. *Commercial Fishing Licenses and Tags.*

(a) (No change.)

(b) Oystering licenses.

(1) Licenses. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A)-(E) (No change.)

(F) nonresident sport oyster boat (type 428)-\$40  
[\$10];

(G)-(H) (No change.)

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

(c) (No change.)

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601295 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642

◆ ◆ ◆  
**Stamps**

• **31 TAC §§53.11-53.13**

The Texas Parks and Wildlife Commission proposes amendments of §§53.11-53.13, concerning stamps.

Proposed amendment of §53.11 (concerning stamp form) removes the wording which prescribes the exact stamp size. Amendment of §53.12 (concerning stamp design) adds flexibility for the executive director to prescribe stamp designs. Amendments to §53.13 (concerning stamp manner of issuance) remove the wording which prescribes the time period for stamps because it is considered an unnecessary restatement of statutory language.

Dr. Bill Harvey, Department Regulatory Coordinator, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Harvey also has determined that for each year of the first five years the rule as proposed is in effect the public will benefit because stamps may be issued by automated point of sale, greatly facilitating ease in obtaining these stamps.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rule as proposed will not impact local economies.

Public comment may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, extension 4823.

The amendments are proposed under authority of Parks and Wildlife Code, §§43.012, 43.201, 43.252, 43.303, 43.403, 43.4035, 43.503, 43.508 and 43.582, which provides authority for the department or commission to set valid periods, and prescribe the form, design, and manner of issuance of hunting and fishing stamps.

Parks and Wildlife Code, §§43.012, 43.201, 43.252, 43.303, 43.403, 43.4035, 43.503, 43.508 and 43.582 is affected by the proposed amendments.

*§53.11. Stamp Form.* Stamp sizes and formats [Each stamp] shall be [1 1/4 inches by 1 11/16 inches in size, printed 10 stamps per page, with one sheet per book or as otherwise] prescribed by the executive director.

*§53.12. Stamp Design.* An artist's original rendition will be the basic design. Stamps issued by an automated system may be an alternate design as prescribed by the executive director.

*§53.13. Stamp Manner of Issuance.* The stamp will be issued upon payment of the prescribed fee in a manner determined by the executive director. [A stamp is valid only during the fiscal year for which it is issued without regard to the date on which the stamp is acquired.]

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601296 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642

## Vessel Registration Agents and Surety Bonds

### • 31 TAC §53.18

The Texas Parks and Wildlife Commission proposes amendment of §53.18, concerning surety bond requirements for vessel registration agents.

Proposed amendments to §53.18 corrects an error in reference to county clerks, which should refer to county tax assessor-collectors. Additionally, the amendment corrects reference to the Texas Department of Insurance.

Dr. Bill Harvey, Department Regulatory Coordinator, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications to governments or local businesses as a result of enforcing or administering the rule.

Dr. Harvey also has determined that for each year of the first five years the rule as proposed is in effect the public will benefit by correct reference to governmental agents responsible for registration of vessels.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rule as proposed will not impact local economies.

Public comment may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, Extension 4823.

The amendment is proposed under authority of Parks and Wildlife Code, §31. 0341.

Parks and Wildlife Code, §31.0341 is affected by the proposed amendment.

*§53.18. Surety Bond Requirements.* A public official (surety) bond or letter of credit is required of all persons approved as authorized vessel registration agents with the exception of departmental employees and county tax assessor-collectors [clerks]. The public official (surety) bond must be executed by a bonding company licensed by the [State Board of Insurance of the] Texas Department of Insurance. The minimal penal sum and terms of the agent bond or letter of credit shall be prescribed by the executive director.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601297 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642

## License Deputies

The Texas Parks and Wildlife Commission proposes the repeal of §53.21 and §53.24; and amendment of §§53.22, 53.23, and 53.25, concerning License Deputies.

Repeal of §53.21 (concerning responsibility for issuance of licenses) removes an unnecessary restatement of statutory language. Section 53.24 (concerning cancellation of license deputies) is proposed for repeal because the wording contained in the section will be incorporated into amended §53. 22.

Proposed amendments to §53.22 (concerning license deputy appointment and cancellation procedures) consolidate wording formerly contained in §53.24 and eliminate unnecessary wording about forms. Amendments to §53.23 (concerning surety bond requirements for license deputies) add an expiration provision of August 31, 1996 for bond requirements and change the reference to the Texas Department of Insurance.

Amendments to §53.25 (concerning license deputy collection and issuance fees) simplify rules to provide a 5.0% license deputy collection and issuance fee for all items issued for the license year beginning September 1, 1996, and thereafter, and retains existing rates for those licenses and stamps issued for the license year which began on September 1, 1995. For the remainder of Fiscal Year 1996, 5.0% collection and issuance fees are proposed for items issued via the automated point-of-sale system and which do not currently have specified collection and issuance fee amounts.

Dr. Bill Harvey, Department Regulatory Coordinator, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the repealed and amended sections. The fiscal implications of the proposed sections will result in a negligible decrease in license and stamp revenue in Fiscal Year 1996 and a decrease of \$1 million annually from fiscal years 1997-2000. There will be no effect on local government and only minimal effect on small business.

Dr. Harvey also has determined that for each year of the first five years the sections as proposed are in effect the public will benefit because license deputies will be more fairly compensated for the services they provide to customers and profit margins on licenses, stamps, permits, and tags will be sufficient to cover costs of credit card transactions if individual license deputies choose to accept credit card payments. There are no anticipated costs to small businesses or persons required to comply with the sections.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the sections as proposed will not impact local economies.

Public comment may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, extension 4823.

• 31 TAC §53.21, §53.24

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

The repeals are proposed under authority of several sections of the Parks and Wildlife Code. Section 12.701 and §12.707, authorize issuance of licenses, stamps, permits, and tags by the Department. Section 12.702(a) allows the department to designate persons as license deputies.

Parks and Wildlife Code, §§12.701-12.702 and §12.707 are affected by the proposed repeals.

§53.21. Responsibility.

§53.24. Cancellation.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601294 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642

• 31 TAC §§53.22, 53.23, 53.25

The amendments are proposed under authority of several sections of the Parks and Wildlife Code. Sections 12.701 and 12.707, authorize issuance of licenses, stamps, permits, and tags by the Department. Section 12.702(a) allows the department to designate persons as license deputies. Section 12.702(b) allows the Commission to set collection and issuance fees for licenses, stamps, tags, permits or other similar items issued under any chapter of the Parks and Wildlife Code.

Parks and Wildlife Code §§12.701-12.702 and §12.707 are affected by the proposed amendments.

§53.22. License Deputy Appointment and Cancellation Procedures.

(a) (No change.)

(b) The Texas Parks and Wildlife Department may cancel the authority of a license deputy to issue licenses if the person fails to comply with the terms set forth in the agreement with the department [These forms may be inspected at the Texas Parks and Wildlife Department Headquarters Complex, 4200 Smith School Road, Austin, Texas 78744].

§53.23. Surety Bond Requirements. A public official (surety) bond or letter of credit is required of all persons approved as license deputies through the license year ending August 31, 1996 with the exception of departmental employees and county clerks. The public official (surety) bond must be executed by a bonding company licensed by the Texas Department [State Board] of Insurance. The minimal penal sum and terms of the license deputy bond or letter of credit shall be prescribed by the executive director.

§53.25. License Deputy [Issuance and] Collection and Issuance Fees.

(a) The following license deputy collection and issuance [and collection] fee amounts are effective for [from] the licensing period beginning September 1, 1995[, and thereafter]:

(1)-(29) (No change.)

(30) duplicate tarpon tag-\$50; [and]

(31) Lake Texoma fishing-\$75; and

(32) any item issued via the automated point-of-sale license system and not listed above-5.0% of the selling price.

(b) License deputy collection and issuance fee amounts for items issued for the licensing period beginning September 1, 1996, and thereafter shall be 5% of the selling price of each item.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601553 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642

Selling Price of Departmental Information

• 31 TAC §53.35

The Texas Parks and Wildlife Department proposes new §53.35, concerning the selling price of departmental information. House Bill 2012, enacted by the 74th Legislature, requires the Parks and Wildlife Commission to adopt policies regarding the disclosure of personal customer information recorded by the department in the course of its marketing and sales activities. The proposed new rule stipulates what types of information can and cannot be released, authorizes the executive director to set the price(s) for the sale of customer information such as mailing lists, and provides for the confidentiality of such information at the request of a customer.

Jayna Burgdorf, Finance Division Director, has determined that for each of the first five years the rule as proposed is in effect the fiscal implications to state government as a result of administering or enforcing the rule as proposed are unquantifiable, since the demand for departmental information is unknown and the selling price will vary according to what the market will bear. There will be no fiscal implications for units of local governments.

Ms. Burgdorf also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be an increase in revenue to assist the department in the attainment of its mission. There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rule as proposed will be the variable cost(s) of authorized personal customer information.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Jayna Burgdorf, Finance Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4420 or 1-800-792-1112, Extension 4420.

The new rule is proposed under Parks and Wildlife Code, §11.030, which gives the commission authority to set policies, delegate authority, and promulgate rules relating to the disclosure of personal customer information.

The proposed new rule affects Parks and Wildlife Code, §11.030, and implements House Bill 2012, Acts of the 74th Texas Legislature, 1995.

§53.35. Release and Sale of Customer Information.

(a) The department may release customer information to accomplish its underlying mission and goals in accordance with

existing commission policies. It is the policy of the commission that certain personal information about the department's customers shall not be released, including, but not limited to, customers' social security, drivers' license, bank account, credit card, or charge card numbers, except where release of such information is dictated by statute or valid court order.

(b) The department may sell mailing lists consisting of names and addresses of persons who purchase customer products, licenses, or services.

(c) The selling price of mailing lists may be adjusted periodically by the executive director or his designee to reflect fair market value of such lists.

(d) The department may release customer information, except personal information, without charge or at a reduced fee when the executive director deems that release of such information is in the best interest of the state.

(e) Upon request by a customer, information about that customer, or information about a customer's minor family members, will not be released or sold by the department except as otherwise specifically provided by law.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601293 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642



## Commercial Fishing Boat Numbers

The Texas Parks and Wildlife Commission proposes repeal of §53.42 and amended §53.41, concerning Commercial Fishing Boat Numbers.

Repeal of §53.42 removes an unnecessary restatement of statutory language, and amendments to §53.41 simplify wording and cross-reference duplicate license plate fee to §53.6.

Dr. Bill Harvey, Department Regulatory Coordinator, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications as a result of enforcing or administering the rule. There will be no effect on state government, local governments or small businesses.

Dr. Harvey also has determined that for each year of the first five years the rule as proposed is in effect the public will benefit by clarification in rules related to commercial fishing boat numbering requirements. The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, Section 4A as this agency has determined that the rules as proposed will not impact local economics.

Public comment may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, extension 4823.

### • 31 TAC §53.41

The amendment is proposed under authority of Parks and Wildlife Code, §47.031, which provides authority to the commission to prescribe fees for transfers and duplicate plates for commercial fishing boat licenses.

Parks and Wildlife Code §47.031 is affected by the proposed amendment.

*§53.41. Composition and Issuance.* The commercial fishing boat number will be on a metal plate to be issued with the commercial fishing boat license bearing the same number in a manner determined by the executive director. The metal plate will be of a design

and contain such additional information as the executive director may determine to be necessary to identify the boat as a commercial fishing boat. In the event of the loss or defacement of a metal plate, the licensee may obtain duplicate plates at the fees prescribed in §53.6 [shall be required to obtain another commercial fishing boat license].

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

Issued in Austin, Texas, on January 30, 1996.

TRD-96012554 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642



### • 31 TAC §53.42

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

The repeal is proposed under authority of Parks and Wildlife Code §47.007 which directs the commission to provide rules for the issuance and use of commercial fishing boat numbers. Section 47.031 provides authority to the commission to prescribe fees for transfers and duplicate plates for commercial fishing boat licenses.

Parks and Wildlife Code §47.007 is affected by the proposed repeal.

### §53.42. Use of Number.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601292 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642



## Chapter 55. Law Enforcement

### Subchapter I. Disposition of Dangerous Wild Animals

#### • 31 TAC §§55.501, 55.503, 55.505.

The Texas Parks and Wildlife Department proposes new §§55.501, 55.503 and 55.505, concerning the disposition of dangerous wild animals. Senate Bill 97, enacted by the 74th Legislature, authorizes the department to seize and dispose of dangerous wild animals, or a carcass, hide, or part of or a product made from a dangerous wild animal if the live animal, carcass, hide, or part of or product was killed, wounded, or injured in, or obtained as a result of a controlled kill. The new rules set forth the regulations for the disposition of seized dangerous wild animals, carcasses, hides, and parts and products made from dangerous wild animals pursuant to Senate Bill 97.

New §55.501 establishes the applicability of this subchapter and defines "convicted" as used in this subchapter. New §55.503 establishes means for disposition of live animals. New §55.505 establishes criteria for disposition of animal parts, hides, and animals carcasses.

Boyd Kennedy, staff attorney, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state government as a result of administering or enforcing the rules as proposed. There will be no fiscal implications for local governments or small businesses.

Mr. Kennedy also has determined that for each of the first five years the rules as proposed is in effect the public benefit anticipated as a result of enforcing the rules as proposed will be the enhanced protection of dangerous wild animals in the state. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Boyd Kennedy, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4584 or 1-800-792-1112, Extension 4584.

The new rules are proposed under Parks and Wildlife Code, §62.104, which gives the commission authority to adopt rules relating to the disposition of certain animals, animal parts, carcasses, and animal products.

The proposed new rules affect Parks and Wildlife Code, §62.104, and implements Senate Bill 97, Acts of the 74th Texas Legislature, 1995.

#### §55.501. Application.

(a) This subchapter sets forth the regulations concerning the disposition of dangerous wild animals, and carcasses, hides, and parts of or products made from a dangerous wild animal seized by a peace officer pursuant to the provisions of Parks and Wildlife Code, Chapter 62, Subchapter F.

(b) For purposes of this subchapter, "convicted" means found guilty by a judge or jury, a plea of guilty or nolo contendere, or placed on deferred adjudication.

#### §55.503. Disposition of Live Animals.

(a) A game warden or other authorized department employee acting under the direction of a game warden may euthanize a dangerous wild animal to eliminate its suffering due to illness or injury, or if the Department is unable to locate a suitable place for the animal under subsection (b) of this section.

(b) If a person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the dangerous wild animal may be transferred to a sanctuary, or to a person with a permit that allows for possession of the animal.

(c) If no person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the dangerous wild animal shall be disposed of according to the instructions of the court.

#### §55.505. Disposition of Carcass, Hide, or Part of Animal, or Product Made From Animal.

(a) If a person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the Department may destroy, or keep, or place on loan for use in an educational display, a carcass, hide, or part of or product made from a dangerous wild animal.

(b) If no person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the carcass, hide, or part of or product made from a dangerous wild animal shall be disposed of according to the instructions of the court, if any, or returned to the person from whom it was seized, or disposed of as specified by a court.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601298 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: March 14, 1996

For further information, please call: (512) 389-4642

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 9. Contract Management

##### Subchapter C. Contracting for Architectural and Engineering

###### • 43 TAC §§9.31-9.33, 9.36-9.38

The Texas Department of Transportation proposes amendments to §§9.31-9.33 and §§9.36-9.38, concerning contract management.

Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, sets forth requirements for selection and contracting of architectural and engineering services.

Section 9.31 revises the definition of: available personnel to reflect the personnel proposed to be used on the contract rather than the entire company; consultant approval team to reflect delegation to the district, division or special office; consultant review committee to reflect delegation of provider selection to the district, division or special office; and Historically Underutilized Business to refer to definition of Historically Underutilized Business as defined by the General Services Commission. The amendments also add the definition of constructability.

Section 9.32 clarifies types of work on which providers will be used by adding construction engineering and inspection.

Section 9.33: removes child support statement as a requirement of the Request for Proposal (RFP), as this is now required as an attachment to the contract; removes copy of the contract with attachments as a requirement of the RFP, as this will now be provided to the provider as revisions are made to the standard contract, by the consultant review committee; and redefines preproposal meeting to allow the meeting to be held at the discretion of the district, regardless of the estimated contract fee.

Section 9.36 clarifies the proposal evaluation summary.

Section 9.37 clarifies the interview evaluation, specifies the number of firms contained in the short list summary, clarifies the duties delegated to the district consultant review committee, removes two criteria from the consultant approval team consideration, and allows more than one extension of the contract execution date.

Section 9.38 clarifies criteria used to evaluate providers upon completion of the contract.

Robert L. Wilson, Director of Design Division, has determined that for the first five years the amendments are in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Wilson also has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

Mr. Wilson also has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of enforcing the amendments will be to expedite the selection process and clarify and streamline procedures in accordance with the 1995-1999 Strategic Plan strategy to plan and design highway projects. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, except there may be a decrease in cost to a provider for travel and lodging if the district determines that a preproposal meeting is not necessary.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m. on Friday, February 23, 1996, in the first floor hearing room of the Dewitt C. Greer, State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5.



Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on March 11, 1996.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, which sets forth requirements for selection and contracting of architectural and engineering services.

The amendments do not affect other statutes, articles, or codes.

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

**Available personnel**—The total number of personnel employed by the provider proposed to be used on the advertised contract [in all offices or branches, regardless of location or discipline].

[Child support statement—A signed, sworn statement, required by §14.52 of the Family Code, accompanying a proposal, affirming that a sole proprietor, partner, shareholder, or owner of the provider business entity is not 30 days or more delinquent in providing child support under a court order or a written repayment agreement.]

**Constructability**—The ability of a project to be easily and accurately constructed from information presented in plans and specifications, and requiring few clarifications or revisions.

**Consultant approval team (CAT)**—The district, division, or special office team [department.] that approves [receives provider recommendations from the DCRC through the CRC, and selects] the provider for the contract.

**Consultants review committee (CRC)**—The department committee that oversees the provider review process [and reviews eligibility of providers].

**Disadvantaged business enterprise (DBE)**—As defined in 49 CFR §23.62 [§23.5], a small business concern, certified by BOP, which is 51% owned by one or more minorities, women, or others that can prove social and economic disadvantages, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minorities, women, or others that can prove social and economic disadvantages, and whose management and daily business operations are controlled by one or more such individuals.

**Historically underutilized business (HUB)**—Any business so

certified by the General Services Commission [A corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit, certified by the General Services Commission, in which 51% of the company is owned by one or more persons who are socially disadvantaged because of their identification as a member of certain groups including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Asian Indian Americans, Native Americans, and have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; and have a proportionate interest and demonstrate active participation in the control, operation, and management of the business affairs].

**Preproposal meeting**—A meeting held to answer questions regarding the contract and the [to distribute] RFP [information].

**§9.32. Provider Services Policy.** Pursuant to **Transportation Code, §223.041** [Texas Civil Statutes, Article 6674g-1], it is the policy of the department regarding the regular use of private sector professional services for preliminary construction engineering and engineering design, to achieve a balance between the use of department employees and the use of private contractors, provided the costs are equivalent. In order to do so, the department may contract the following types of work:

- (1) preliminary engineering, design, plan work, specifications, and estimates;
- (2) construction engineering and inspection;
- (3)[(2)] bridge inspection and scour analysis services;
- (4)[(3)] environmental engineering, project observation, and inspection;
- (5)[(4)] architectural design, plan work, specifications, and estimates;
- (6)[(5)] architectural observation and inspection; and
- (7)[(6)] other engineering or architectural services as defined in Government Code, Chapter 2254, Subchapter A.

**§9.33. Request for Proposals and Preproposal Meetings.**

(a) Notice.

(1) *Texas Register* and newspapers. The department will prepare a notice identifying a proposed contract and a due date for providers to send letters of interest [intent] to the department. The department will publish this notice in the *Texas Register* and newspapers a minimum of ten days prior to the **deadline for receiving the letter of interest** [event]. The department will select newspapers based on general circulation to provide statewide distribution.

(2) Electronic notice. The department will publish a notice containing the same information as the notices in the *Texas Register* and newspapers on an electronic bulletin board a minimum of ten days prior to the **deadline for receiving the letter of interest** [event].

(3) Organizations. The department will publish a **quarterly** [monthly] statewide list of projected contracts for consulting engineering and architectural services and will furnish the list on a **quarterly** [monthly] basis to community, business, and professional organizations for dissemination to their membership.

(b) Letter of interest [intent]. Within ten days of the publication of the notice concerning the contract, the provider shall send a letter of interest [intent] to the department notifying the department of the provider's interest in submitting [intent to submit] a proposal. The department will accept a letter of interest [intent] by electronic facsimile. The department will notify the provider of the date for the preproposal meeting, if applicable, and send the provider a copy of the RFP.

(c) Requests for proposals. An RFP will include the following proposal requirements:

- (1) -(6) (No change.)
- (7) a copy of the evaluation forms [matrices];
- (8) (No change.)
- [(9) a child support statement form;]
- (9)[(10)] a debarment certification form;
- (10)[(11)] a lower tier debarment certification form;
- (11)[(12)] a lobbying certification/disclosure form (if federally funded); and
- [(12) a copy of the proposed contract, with all attachments including, but not limited to, the DBE/HUB special provision; and]
- (12)[(14)] any special contract requirements.

(d) Preproposal meeting. The district may require a preproposal meeting to provide [provides] an opportunity for the provider to seek clarification of questions concerning the contract. [The meeting is mandatory for contracts with an estimated fee over \$250,000. The meeting is optional at the discretion of the district for contracts with an estimated fee less than or equal to \$250,000.] If a preproposal meeting is required, the [The] department will not accept proposals from providers that did not have a representative at the preproposal meeting.

§9.36. Interview.

(a) Identification of providers for interview. The department will evaluate each proposal and prepare a proposal evaluation summary [matrix] which totals the scores from the proposal evaluations. The DCRC will then choose a minimum of three providers to interview (provided that no less than three providers have submitted proposals) up to ten of those qualified from the highest ranking scores to interview based upon the number of proposals, qualifications, and score on the proposal evaluation scale.

(b) (No change.)

§9.37. Selection.

(a) Evaluation criteria.

(1) Factors considered. The CRC will establish weighting factors to be used statewide for the following factors that DCRC will consider [the following factors] in its evaluation of the provider's interview:

(A)-(C) (No change.)

(2) (No change.)

(b) Short list.

(1) Short list summary. The department will prepare a short list summary which will include the DCRC's ranking of qualified providers, the name of the project managers, the names of any subproviders included on the team, and current dollar volume of the providers interviewed compared to the ratio of available person-

nel. [All those interviewed will be included, unless the department discovers that a provider has misrepresented information in the proposal.]

(2) Selection.

(A) The [CRC will review the] DCRC will [recommendations to ensure compliance with state and federal laws, and department policies and procedures, and] forward the ranked short list, proposals, and its recommendations to the CAT for approval.

(B) The CRC will establish weighting factors to be used statewide for each of [CAT will consider] the following factors that the CAT will consider in selecting a provider:

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

[(iv) the project manager;

[(v) the ability of the provider to commit resources;] and

[(iv)[(vi)] the DCRC ranking of qualified providers.

(c) (No change.)

(d) Negotiations.

(1) (No change.)

(2) Contract execution. The provider shall sign the contract 35 working days from the date of notification to the provider. The department may grant a [one] 30-working day extension. An extension must be authorized before the expiration of the negotiation period or extension.

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

§9.38. Contract Management.

(a) DBE/HUB participation.

(1) DBE/HUB program goals may be satisfied by the prime provider.

(2) (No change.)

(b)-(f) (No change.)

(g) Provider performance evaluations. Upon completion of the contract, the district, division, or special office [The DCRC] will evaluate the provider's performance in the categories of cost administration, [engineering/architectural or services delivery] quality, timeliness, and constructability [conformance upon completion of the contract]. These performance evaluations may be used in determining the qualifications of the provider.

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

Issued in Austin, Texas, on January 31, 1996.

TRD-9601345 Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Earliest possible date of adoption: March 11, 1996

For further information, please call: (512) 463-8630



# WITHDRAWN RULES

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

## TITLE 22. EXAMINING BOARDS

### Part XXI. Texas State Board of Examiners of Psychologists

#### Chapter 463. Applications

- 22 TAC §463.32

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption a proposed new §463.32, which appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9667). The effective date of this withdrawal is January 30, 1996.

Issued in Austin, Texas, on January 29, 1996.

TRD-9601266      Rebecca E. Forkner  
Executive Director  
Texas State Board of Examiners of Psychologists

Effective date: January 30, 1996

For further information, please call: (512) 305-7700

#### Chapter 465. Rules of Practice

- 22 TAC §465.38

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption a proposed new §465.38, which appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9669). The effective date of this withdrawal is January 30, 1996.

Issued in Austin, Texas, on January 29, 1996.

TRD-9601267      Rebecca E. Forkner  
Executive Director  
Texas State Board of Examiners of Psychologists

Effective date: January 30, 1996

For further information, please call: (512) 305-7700

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 295. Occupational Health

#### Texas Environmental Lead Reduction

- 25 TAC §295.217

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §295.217, which appeared in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10491). The effective date of this withdrawal is January 29, 1996.

Issued in Austin, Texas, on January 29, 1996.

TRD-9601242      Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: January 29, 1996

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

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty Insurance

#### Subchapter R. Temporary Rate Reduction for Certain Lines of Insurance

- 28 TAC §5.14011

The Texas Department of Insurance has withdrawn from consideration for permanent adoption a proposed new §5.14011, which appeared in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5600). The effective date of this withdrawal is January 29, 1996.

Issued in Austin, Texas, on January 29, 1996.

TRD-9601244      Alicia M. Fectel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Effective date: January 29, 1996

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

#### Subchapter D. Resources

- 40 TAC §15.433, §15.435

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendments to §15.433 and §15.435, concerning funding for the §1929(b) program, in its Medicaid Eligibility chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6003). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601332      Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765

## Subchapter E. Income

### • 40 TAC §15.455, §15.465

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendments to §15.455 and §15.465, concerning funding for the §1929(b) program, in its Medicaid Eligibility chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6004). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601333 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Subchapter F. Budgets and Payment Plans

### • 40 TAC §15.500

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §15.500, concerning funding for the §1929(b) program, in its Medicaid Eligibility chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6004). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601334 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Subchapter G. Application for Medicaid

### • 40 TAC §15.610, §15.623

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendments to §15.610 and §15.623, concerning funding for the §1929(b) program, in its Medicaid Eligibility chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6005). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601335 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

### Subchapter S. Reimbursement Methodology for Nursing Facilities

#### • 40 TAC §§19.1801-19.1807

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendments §§19.1801-19.1807, concerning reimbursement methodology for nursing facilities, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5702). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601337 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



#### • 40 TAC §19.1808, §19.1809

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed repeal of §19.1808 and §19.1809, concerning Reimbursement Methodology for Nursing Facilities, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5706). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601336 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Subchapter BB. Nursing Facilities Program Cost Determination Process

### • 40 TAC §19.2701, §19.2702

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed new §19.2701 and §19.2702, concerning Nursing Facilities Program Cost Determination Process, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5706). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601338 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Chapter 20. Cost Determination Process

### • 40 TAC §§20.101-20.111

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed new §§20.101-20.111, in its proposed Cost Determination Process chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5707). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601339 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



Chapter 24. Reimbursement Methodology  
Subchapter A. Cost Determination Process  
Determination of Payment Rates

• 40 TAC §24.101

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §24.101, concerning Cost Determination Process, in its Reimbursement Methodology chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5733). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601340 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



Chapter 46. Residential Care Program

Support Documents

• 40 TAC §46.7001

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed repeal of §46.7001, concerning support documents, in its Residential Care Program chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5733). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601346 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



• 40 §46.7001, §46.7002

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed new §46.7001 and §46.7002, concerning support documents, in its Residential Care Program chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5734). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601347 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



Chapter 47. Primary Home Care

General Provisions and Services

• 40 TAC §47.1901

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §47.1901, concerning definitions, in its Primary Home Care chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6005). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601348 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



Service Requirements

• 40 TAC §47.2902, §47.2913

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendments to §47.2902 and §47.2913, concerning requesting prior approval for primary home care and prior approval renewal for primary home care, in its Primary Home Care chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6005). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601349 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



Support Documents

• 40 TAC §47.5902

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed new §47.5902, concerning support documents, in its Primary Home Care chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5738). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601350 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



Chapter 48. Community Care for Aged and Disabled

Client-Managed Attendant Services

• 40 TAC §48.2613, §48.2614

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendment and new §48.2613 and §48.2614, concerning contractor responsibilities, in its Community Care for Aged and Disabled chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5742). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601353 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Eligibility

### • 40 TAC §48.2918

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §48.2918, concerning eligibility for primary home care, in its Community Care for Aged and Disabled chapter, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6006). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601351 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## 1915(c) Medicaid Home and Community-Based Waiver Services for Aged and Disabled Adults Who Meet Criteria for alternatives to Nursing Facility Care

### • 40 TAC §48.6020, §48.6021

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §48.6020 and new §48.6021, concerning reimbursement methodology, in its Community Care for Aged and Disabled chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5748). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601354 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Support Documents

### • 40 TAC §§48.9801, 48.9802, 48.9805, 48.9806, 48.9808, 48.9809, 48.9811, 48.9812

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendment and new §§48.9801, 48.9802, 48.9805, 48.9806, 48.9808, 48.9809, 48.9811, and 48.9812, concerning reimbursement methodology for special services to persons with disabilities-shared attendant care, in its Community Care for Aged and Disabled chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5749). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601355 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



### • 40 TAC §48.9805

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed repeal of §48.9805, concerning reimbursement methodology for congregate and home-delivered meals, in its Community Care for Aged and Disabled chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5749). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601352 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Chapter 50. Day Activity and Health Services Reimbursement Methodology for Day Activity and Health Services

### • 40 TAC §§50.6901, 50.6902, 50.6904-50.6907

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption the proposed amendments and new §§50.6901, 50.6902, and 50.6904-50.6907, concerning Reimbursement Methodology for Day Activity and Health Services, in its Day Activity and Health Services chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5765). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601356 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



## Chapter 52. Emergency Response Services

### Claims

### • 40 TAC §52.502, §52.504

The Texas Department of Human Services (DHS) has withdrawn from consideration for permanent adoption a proposed amendment to §52.502, and new §52.504, concerning reimbursement methodology for Emergency Response Services, in its Emergency Response Services chapter, which appeared in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5770). The effective date of this withdrawal is January 31, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601357 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: January 31, 1996

For further information, please call: (512) 438-3765



# ADOPTED RULES

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

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

## TITLE 4. AGRICULTURE

### Part X. Texas Boll Weevil Eradication Foundation

#### Chapter 195. Organic Cotton Regulations

##### • 4 TAC §§195.1-195.5

The Texas Boll Weevil Eradication Foundation, Inc. (the Foundation) adopts new §§195.1-195.5, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9327).

The new sections are adopted in order to establish requirements and procedures governing boll weevil control in organic cotton fields, in accordance with the Texas Agriculture Code, §74.125, as amended by Senate Bill 1196, 74th Legislature, 1995.

New §195.1 provides a statement of authority for regulating organic producers. New §195.2 provides guidelines for organic cotton producers to give notice to the foundation regarding organic production. New §195.3 provides for the payment by organic cotton growers of the assessment established by the growers and the Foundation. New §195.4 provides for eradication program activities unique to organic cotton production. New §195.5 provides for indemnity funds to be established to reduce the loss to organic cotton producers when crop destruction is the only alternative to spraying an organic cotton field.

New §§195.1-195.5 were originally published in the April 11, 1995, issue of the *Texas Register* (20 TexReg 2692), but were withdrawn due to inaction by the Foundation's Board of Directors within the time period specified by law. The comments received during the original comment period, ending May 11, 1995, have been incorporated into the record of this submission.

During the 30-day period following the April 11, 1995, publication of the proposal, comments generally in support of the proposal were submitted by the Southern Rolling Plains Cotton Growers Association. The Chemical Connection submitted comments generally in disagreement with the proposal. The Texas Organic Marketing Cooperative submitted comments requesting several changes to the rules in regard to indemnification of producers and establishment of boll weevil trigger levels by the Foundation. A total of 18 letters commenting on the rules were received. Eleven of the letters were in a form letter format signed by individuals.

Eleven comments expressed concern with the population of boll weevils used to determine trigger levels under the rules and requested a reasonable indemnity for losses due to plow-up or non-planting. These comments also suggested additions to the rules to allow for provisions showing numbers of boll weevils in fields to allow organic growers to make informed decisions as crops progress. The Foundation disagrees with these comments and believes the boll weevil trigger levels are acceptable, based on prior success of the program, and that adequate indemnity provisions have been provided for within the rules. Provisions for plow-up or non-plant requirements have been established within the rules and a regular, current trapping status report is available to growers, as stated in the rules.

One comment suggested the rules lacked certainty in regard to indemnities for organic cotton growers and this lack of certainty would not be

acceptable to lending institutions or practical business planning. The Foundation disagrees and believes the provisions for indemnities should remain as flexible as possible within the rules because of program differences from zone to zone, differences in the options organic and traditional growers within a particular zone may select, and differences among organic cotton producers regarding such variables as yield, crop mixes, etc.

Another comment suggested §195.4 and §195.5 be changed to clarify monitoring methods and the terms of indemnification. The Foundation disagrees and believes the sections, as written, follow established eradication monitoring methods that have been successful in the program for many years and that indemnification, as previously stated, is adequately addressed under the rules.

One comment suggested several options to indemnify organic cotton growers for any required crop destruction. It also suggested the planting of alternative crops as well as the application of biological control products or other non-chemical methods. The comment further suggested the Foundation not chemically treat any organic cotton. The Foundation disagrees and believes that indemnification should remain as flexible as possible for the reasons stated previously in this preamble. Furthermore, under Senate Bill 1196, as passed by the Texas Legislature, the Foundation is now required by law to not chemically treat and will not treat any organic cotton, but plow-up or non-planting may be required.

One comment suggested organic cotton growers not pay assessments, questioned the established threshold level of boll weevils used to determine treatment and suggested the words "conventional spraying program" in §195.4 be changed to "conventional program" based on the assumption that current alternative methods may become conventional in the future. The Foundation disagrees and believes that it has been established that all cotton growers within an eradication zone will pay the assessment to keep cost sharing equal and that the current boll weevil threshold is acceptable based on years of successful eradication efforts. The Foundation, until further determination by scientific means, does not accept alternative treatment methods as conventional and have made no changes to §195.4(b).

Three comments in support of the rules suggested organic cotton growers not be given any special consideration and no changes to the rules be allowed. The foundation disagrees and believes rules are necessary and required by law.

A total of three letters commenting on the rules were received by the Foundation during the 30-day comment period following the November 14, 1995 publication. Two of the three commentators, all of whom oppose the proposal, had previously submitted comments during the comment period following the April 11, 1995 publication. Their comments were virtually unchanged from their previous submissions. The third respondent voiced concerns about trigger levels and the indemnification process as outlined in proposed §195.4 and §195.5, respectively. These concerns have been addressed elsewhere in this preamble. The Foundation believes the rules provide a fair consideration for organic cotton production.

The new sections are adopted under the Texas Agriculture Code, §74.125, as amended by Senate Bill 1196, which provides the Texas Boll Weevil Eradication Foundation with the authority to adopt rules setting criteria for organic cotton producers in an eradication zone.

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 January 30, 1996.

TRD-9601258 Franklin D. Myers  
Executive Director  
Texas Boll Weevil Eradication Foundation

Effective date: February 20, 1996

Proposal publication date: November 14, 1995

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

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 31. Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

The Texas Department of Health (department) adopts the repeal of §§31.1-31.4 and new §§31.1-31.3, concerning nutrition services. New §§31.1 and §31.2 are adopted with changes to the proposed text as published in the December 1, 1995, issue of the *Texas Register* (20 TexReg 10180). The repeal of §§31.1-31.4 and new §31.3 are adopted without changes and therefore will not be republished. The changes are minor *Texas Register* formatting changes.

Specifically, the sections cover the Special Supplemental Food Program for Women, Infants, and Children (WIC); the Farmers' Market Coupon Demonstration Project; and the register of mother-friendly businesses. The repeal of §§31.1-31.4 will allow Chapter 31 to be reorganized and renamed "Nutrition Services." When Chapter 31 was originally created, WIC was the only nutrition program requiring rules. Section 31.4, concerning the Farmers' Market Coupon Demonstration Project, was added to Chapter 31 effective June 1, 1989, but was not related to WIC. This year the addition of a new nutrition program also unrelated to WIC concerning the establishment of a register of "mother-friendly" businesses requires the reorganization and renaming of Chapter 31. The new title, "Nutrition Services", more appropriately includes all the department's related programs. New §31.1 includes language currently found in §§31.1-31.3, relating to WIC. New §31.2 includes language currently found in §31.4, relating to the Farmers' Market Coupon Demonstration Project. New §31.3 establishes procedures that a business must employ in order to comply with the minimum standards in Health and Safety Code, §165.003(a). A business seeking to use the term "mother-friendly" in its promotional materials must submit its policies to the department for review and approval. The department will make the register of "mother-friendly" businesses available to the public.

The sections provide for the improvement of the health of both mothers and their children.

No comments were received on the repeal and new sections as proposed.

#### • 25 TAC §§31.1-31.4

The repeals are adopted under Health and Safety Code, §12.001(b), which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601238 Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: February 19, 1996

Proposal publication date: December 1, 1995

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

## Chapter 31. Nutrition Services

### • 25 TAC §§31.1-31.3

The new sections are adopted under Health and Safety Code, §12.001(b), which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

#### §31.1. Special Supplemental Food Program for Women, Infants, and Children (WIC).

##### (a) Federal regulations.

(1) The department adopts by reference the United States Department of Agriculture regulations on the Special Supplemental Food Program for Women, Infants, and Children (WIC). These regulations are contained in the Federal Register publication entitled "Special Supplemental Food Program for Women, Infants, and Children" dated February 13, 1985, as amended October 4, 1993, November 29, 1993, March 10, 1994, and March 11, 1994.

(2) Copies of the regulations described in paragraph (1) of this subsection are filed in the department's Bureau of Nutrition Services-Women, Infants, and Children (WIC) Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

##### (b) WIC State Plan of Operations.

(1) The department adopts by reference the United States Department of Agriculture regulations on the Special Supplemental Food Program for Women, Infants, and Children (WIC). The regulations are contained in the Federal Register publication titled "Special Supplemental Food Program for Women, Infants, and Children" dated February 13, 1985, as amended in October 1993.

(2) Copies of the state plan are filed in the department's Bureau of Nutrition Services-Women, Infants, and Children (WIC) Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

##### (c) WIC Policy and Procedure Manual.

(1) The department adopts by reference the publication titled "WIC Policy and Procedure Manual," which the department developed, as amended May 1, 1994. This policy and procedure manual has been developed by the department's WIC Program and approved by the United States Department of Agriculture.

(2) Copies of the manual are filed in the department's Bureau of Nutrition Services-Women, Infants, and Children (WIC) Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

#### §31.2. Farmers' Market Coupon Demonstration Project.

(a) The department adopts by reference the state plan for operations for the Farmers' Market Coupon Demonstration Project in Texas. The state plan is titled "Plan for Project Operations."

(b) Copies of the state plan described in subsection (a) of this section are filed in the Bureau of Nutrition Services-Women, Infants, and Children (WIC), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

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



Issued in Austin, Texas, on January 29, 1996.

TRD-9601239

Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: February 19, 1996

Proposal publication date: December 1, 1995

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

## Chapter 35. Pharmacy Services

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits the adoption of new §35.611, and the repeal of §35.901, concerning the reimbursement methodology for pharmacy dispensing fees. New §35.611 is adopted with changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10474-10476, 10660-10662). The repeal of §35.901 is adopted as proposed.

The new section defines an alternative methodology for determining reimbursement to contracted vendors, which is based on an analysis of market-related conditions. The new section allows the department to design its reimbursement methodology for determining dispensing fees based upon an analysis of market-related factors. The department will have the authority to obtain market-based information about other comparable third-party payor arrangements.

A determination of pharmacy costs will no longer be made by the department. This change will provide relief to contracted vendors who currently must maintain substantial, complex record keeping to satisfy the department's reporting requirements. The department will continue to consider maintenance of recipient access to pharmacy services as a requisite element of its recommendations.

Additional information on the basis for adoption of this rule is found in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10474-10476, 10660-10662).

A summary of the comments and the department's responses to the comments follows.

**COMMENT:** Concerning §35.611, several pharmacists commented that it was not the intent of the legislature, in Senate Bill 10 or Riders 25 and 44 to the department's provisions of the General Appropriations Act, to implement a reimbursement methodology which would decrease access to pharmacy services or harm small businesses.

**RESPONSE:** The department shares the concerns regarding the maintenance of adequate access to pharmacy services. However, the department believes the market-based approach will prove to be both an adequate and a more efficient alternative to the current cost-based methodology. The language of Rider 25 to the department's provisions of the General Appropriations Act is particularly clear as it states that the department shall submit a Medicaid State Plan Amendment to modify the Vendor Drug Program's reimbursement methodology to reduce the dispensing fee to reflect current market conditions and rates. As required, the department and its consultants performed an analysis that effectively captured other comparable, third-party arrangements. This analysis serves as the basis for the department's action. The department has not identified any documentation in the history of Senate Bill 10 that links that legislation with the issues addressed by Riders 25 and 44 to the department's provision of the General Appropriations Act for the 1996-1997 biennium. No dispositive legislative intent has been identified by the department, other than that which is stated in the legislation. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a pharmacist stated that the rural/urban differential was meant as a way to protect those rural recipients and their providers and maintain adequate access to pharmacy services.

**RESPONSE:** The department agrees with the need for Medicaid to maintain adequate access to pharmacy services for Medicaid recipients. Rider 44 to the department's provision of the General Appropriations Act, which states that the department shall review the need for a special dispensing fee for rural areas, is the basis for the \$1.00 supplemental payment to rural pharmacies. A primary objective of the

Texas Medicaid program is to provide medically necessary services to eligible Medicaid recipients and to ensure adequate and appropriate access to health care services for those recipients. A market-based approach is not designed to maintain a desired profit margin for particular providers, or to sustain particular businesses. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a number of independent and community-based pharmacists offered comments that the proposed rule change will have a detrimental economic impact on their businesses and may result in some independent pharmacies going out of business or cause them to reduce employment.

**RESPONSE:** While the department is concerned about the potential economic impact that dispensing fees based on market-based reimbursement methodology will have on all contracted vendors throughout the state, the primary concern is ensuring that Medicaid recipients throughout the state maintain adequate access to pharmacy services. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several of the commenters stated that as a result of the financial harm imposed upon pharmacies from the proposed rule change, particularly independent and community-based pharmacies, recipient access to adequate pharmacy services will be detrimentally affected.

**RESPONSE:** The department recognizes the potential for inadequate access to pharmacy services, which may develop due to provider non-participation, in a small percentage of areas. The department has amended the proposed rule to allow for an additional supplemental dispensing fee in the amount of the actual cost of shipping in order to ensure Medicaid recipients adequate access to pharmacy services. Changes to the proposed rule were made as a result of this comment.

**COMMENT:** Concerning §35.611, several of the commenters stated that the current level of reimbursement for delivery services (\$.10 per delivery) is inadequate. The commenters state that absent adequate payment, recipient access to pharmacy services will be impaired.

**RESPONSE:** See previous response. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several commenters stated that the department's definition of rural and urban is inappropriate and that the counties in which their pharmacies are located, while classified as urban, should be considered rural. The commenters state that their pharmacies should, therefore, receive the rural supplemental payment of \$1.00 per prescription.

**RESPONSE:** The department disagrees. The department utilized the standardized definition of "rural area," as defined by the Office of Management and Budget (OMB), Office of the President of the United States. No alternate standardized definitions distinguishing urban from rural areas were proposed by commenters to the rule. The department developed the rural/urban payment differential in response to Rider 44 to the department's provision of the General Appropriations Act, which required that TDH review the need for a special dispensing fee for pharmacists in rural communities. The department reviewed the need for supplemental dispensing fees to ensure statewide access to adequate pharmacy services for Medicaid recipients. The department also amended the rule, in response to comments received, to provide a supplemental dispensing fee in the amount of the actual cost of shipping in order to ensure Medicaid recipients adequate access to pharmacy services. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several commenters stated that if a differential is to be paid, then the department should make supplemental payments to the pharmacies for which Medicaid represents a substantial portion of their business.

**RESPONSE:** The department disagrees. Supplemental payments for high-volume Medicaid providers is not an element of a market-based system. Additionally, payment differentials based on a pharmacy's proportion of Medicaid business is inherently arbitrary. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, many pharmacists stated that the department's use of the Employees' Retirement System (ERS) as the basis for developing the market-based comparison was inappropriate. The commenters state that the department should have employed the cash-paying customer as a significant variable in the comparison since

this component, combined with Medicaid, comprises the majority of their business.

**RESPONSE:** The department disagrees. The market-based methodology adopted by the department views the market from the standpoint of other comparable, third-party payor programs which purchase drug prescription services. The department believes that comparing the largest purchaser of prescription drugs in the state with individual cash purchasers is inappropriate. One of the objectives of the market-based approach is for the department to utilize its purchasing power as the single largest payor of pharmacy services in the state. Using an individual cash customer as the basis for comparison implicitly assumes the absence of any purchasing power that might meaningfully affect the price paid for services. While the detailed comparison of the Texas Medicaid program is with the ERS system, analytical comparisons were also made with the University of Texas, Texas A&M, and the Teachers' Retirement System. These additional comparisons confirmed the findings of the January 10, 1995 report by the Legislative Budget Board to the Legislature. All of these systems are adopting or have adopted similar payment systems. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several commenters stated that the appropriate comparison with Employees' Retirement System (ERS) should be with the system which is currently in place and not the system that ERS is projecting for 1996.

**RESPONSE:** The department disagrees. Using the current ERS system ignores the reality of the market for pharmacy services. Competition in the market for pharmacy services is resulting in reductions in reimbursement rates for these services. While ensuring adequate access to services is a necessary component of the Medicaid program, the department believes that this can be accomplished under the market-based methodology as specified in new §35.611. As indicated above, additional comparisons have also been made. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, independent and community-based pharmacists commented that the cost to serve Medicaid recipients is inherently higher because they are a more difficult population to serve. In particular, because many speak Spanish and some may be illiterate, additional time-consuming counseling is required. Because of this, simple comparison to other third-party arrangements may not be applicable.

**RESPONSE:** The department agrees that while some Medicaid recipients may require more counseling and take more pharmacist time, this does not apply to all Medicaid recipients. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several of the independent and community-based pharmacists indicated that the current cost-based reimbursement methodology, which results in a dispensing expense of \$5.01, is equitable and should be used as the basis for reimbursement.

**RESPONSE:** The department disagrees. Rider 25 to the department's provisions of the General Appropriations Act specifically states that the department shall modify the Vendor Drug Program's reimbursement methodology to reduce the dispensing fee to reflect market practices and rates. In general, cost-based reimbursement systems are outdated and typically result in less than efficient program administration because incentives for cost containment do not exist. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a number of commenters and the Texas Pharmacy Association recommended that the current dispensing fee reimbursement methodology be maintained, a \$5.01 dispensing expense be used in the formula, and the profit factor be set at 3.0%.

**RESPONSE:** The department disagrees. As indicated above, the department considers the cost-based methodology to be inherently inefficient and believes that the market-based approach will result in more efficient program administration and maintain adequate access to pharmacy services for Medicaid recipients. With the exception of the Arkansas Medicaid program, the department finds no other states in which a profit factor is paid as an add-on to the dispensing expense and the cost of the drug. In a market-based approach, profit is considered to be an element of the overall payment that the state offers and a participating vendor accepts. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several commenters stated that the department should not pay for brand name drugs when a generic is available.

**RESPONSE:** The department disagrees. The department's policy is to encourage the use of therapeutically equivalent generics through the Maximum Allowable Cost (MAC) payment caps. This comment is not germane to the new rule. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several commenters stated that the department should pay a differential dispensing fee for generics versus brand name drugs, as this is a common element of some other third-party payment plans that currently exist in the market. The commenters state that paying a higher fee for generics will serve to discourage the use of more expensive brand name drugs.

**RESPONSE:** The department disagrees. Currently, the department estimates that only 1.0%-3.0% of generic medications are specifically substituted with brand name medications, at the written request of the physician. The department also has a program in place to identify physicians who consistently use brand name medication when a generically equivalent alternate exists and, in many instances, has been successful in altering prescription patterns. Because of the low potential for increased use of generics, paying a supplement for a service which is already being provided would result in an unnecessary increase in vendor drug expenditures. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several of the independent and community-based pharmacists suggested that the department employ a restrictive formulary in order to save money in lieu of a market-based dispensing fee.

**RESPONSE:** The department disagrees. Using a restrictive formulary would make the department ineligible to participate in the federal rebate program, which equals approximately \$120 million per year. There is no evidence that a restrictive formulary would result in savings which could approach the amount collected through the rebate program. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, some of the independent and community-based pharmacists stated that the department should limit the number of days supply for which a prescription is written. The commenters state that the current limit of 180 days should be reduced to 30-40 days.

**RESPONSE:** The department disagrees. The department believes that the length of supply a prescription covers is primarily within the purview of the physician writing the prescription. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several of the pharmacists stated that the department should impose specific guidelines for physicians to follow which would require the use of less expensive drugs prior to prescribing more costly alternatives.

**RESPONSE:** The department disagrees. The department's policy is that the overall content of the prescription is within the purview of the physician writing the prescription. The department's policy is to encourage the use of therapeutically equivalent generics through the Maximum Allowable Cost (MAC) payment caps. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several pharmacists criticized the current limit of three prescriptions per month for recipients over 21 years of age, and not residing in a nursing facility. The commenters state that this restriction actually results in greater overall expenditures resulting from more hospital and nursing facility admissions and should, therefore, be eliminated.

**RESPONSE:** The department disagrees. The prescription limit referred to is not an element of the new rule, but is addressed in another section of the department's rules. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, one pharmacist stated that the department should limit the number of prescriptions provided to recipients in skilled nursing facilities.

**RESPONSE:** The department disagrees. The prescription limit referred to is not an element of the new rule, but is addressed in another section

of the department's rules. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, several independent pharmacists stated that they provide a unique array of services which are not typically provided by chain pharmacies, including translating instructions into Spanish, extra counseling, special packaging, and providing free delivery. The commenters state that if independent pharmacists elect against participating in the Medicaid program because of the new rule, these necessary services would not be provided by contracted chain pharmacies, and recipients would suffer.

RESPONSE: The department disagrees. The department has seen no indication that the provision of translation and federally required counseling services are linked to the type of pharmacy providing the service. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, several commenters stated that the department should not pay for over-the-counter drugs.

RESPONSE: The department disagrees. The department believes that the result of not covering over-the-counter drugs will be the use of alternate, more expensive drugs. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, several commenters recommended that the department establish a co-payment of \$.50-\$1.00 that recipients must pay to receive each prescription.

RESPONSE: The department disagrees. The department believes that access to pharmacy services would be less than adequate if a co-payment were required of recipients and that the resulting administrative burden on pharmacies and the department would not enhance efficient program administration. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one independent pharmacist suggested that a voluntary co-payment of \$.50-\$1.00 be allowed. This comment indicated that the Medicaid recipients he serves would be willing to make such a payment in order to forego the hardship and likely reduction in services associated with switching pharmacies.

RESPONSE: The department disagrees. The department is particularly concerned about the potential for misuse since this would necessarily be an unregulated arrangement between the provider and the Medicaid recipient. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one independent pharmacist stated that if reimbursement is reduced, the independent pharmacists will no longer be able to provide "lock-in" services.

RESPONSE: The department disagrees. Providing "lock-in" services is an optional service that certain providers perform for the program. The purpose of the program is to identify Medicaid recipients who have demonstrated inappropriate use of the Medicaid program and assist them with managing their health care needs by limiting them to specific providers. This benefit accrues not only to the recipient, but to the provider and program as well, since the result is a more cost efficient use of health care resources. The department believes that the market-based methodology will result in adequate reimbursement and that providers will continue to voluntarily offer these services. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, several pharmacists stated that the department inadequately reimburses for compounded and intravenously (IV) injected medications. The commenters stated that these medications require more time and effort and should be reimbursed at a higher amount.

RESPONSE: This is an issue which warrants future consideration by the department. The department believes this issue is more appropriately addressed in the section of the department's rules that govern reimbursement for the acquisition cost of the drug. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one independent pharmacist stated that the department should eliminate Maximum Allowable Cost (MAC) overrides.

RESPONSE: The comment does not address the reimbursement methodology for dispensing fees, which is the subject of the new rule. This comment refers to establishing pricing for generically equivalent drugs as they become available from the federal government, as

required by federal law. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one commenter stated that the Medicaid program pays too much for drugs and continues to incur greater costs than are necessary for equivalent drug products.

RESPONSE: This comment relates to reimbursement for the acquisition cost of the drug rather than to the dispensing fee, and reimbursement for drug cost is covered in another section of the department's rules. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one commenter stated that the Medicaid program should place greater restrictions on limiting refills.

RESPONSE: The department disagrees. The department believes that it has in place adequate controls limiting the refilling of prescriptions. The new rule addresses reimbursement methodology for determining dispensing fees, rather than reimbursement for drug acquisition costs. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one commenter stated that the Medicaid program should obtain greater rebates for the more expensive, brand name drugs.

RESPONSE: This is an issue which is governed by federal law and does not relate to the new rule. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one independent pharmacist stated that the department should reduce only slightly the opportunity for profit since a large reduction in reimbursement would force pharmacies that carry costly medications to turn away patients.

RESPONSE: The department believes it would be inappropriate to pay a profit on all prescriptions to ensure that a small number of high cost drugs are available. This issue relates to the rule that governs the acquisition cost of the drug, rather than to the rate methodology for dispensing fees. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one commenter stated that the department should implement a tiered reimbursement system based on the cost of the drug dispensed because of the additional inventory expense associated with expensive drugs. The commenter states that paying more for expensive drugs will ensure their availability.

RESPONSE: See previous response. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, one independent pharmacist stated that the department should obtain larger rebates from the manufacturer as a means to sustain reimbursement to pharmacists.

RESPONSE: This is an issue which is governed by federal law and does not relate to the new rule. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, several pharmacists stated that the department should pay for cognitive services for recipients that have diseases such as diabetes, asthma, and high blood pressure.

RESPONSE: The department agrees that this issue warrants additional consideration. However, the department believes this to be outside the scope of the new rule. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, several pharmacists stated that all of the Medicaid programs should share in making up for the budget shortfall and that the Vendor Drug program is being asked to shoulder a disproportionate share of the necessary savings.

RESPONSE: The department disagrees. The new rule addresses rate methodology for determining dispensing fees, rather than program funding. The new rule is in response to Riders 25 and 44 to the department's provisions of the General Appropriations Act for the 1996-1997 biennium directing the department to reduce the dispensing fee and implement a market-based reimbursement methodology. The January 10, 1995 Legislative Budget Board report to the Legislature found that Medicaid's cost-based reimbursement is excessive. No changes were made as a result of this comment.

COMMENT: Concerning §35.611, a pharmacist providing services for home infusion patients stated that TDH reimbursement is too low to cover the cost of providing care to these patients. The additional

services provided to these patients include establishing charts, counseling, compounding, extra pre-certification costs, extra supplies, and delivery. The commenter recommends leaving reimbursement unchanged.

**RESPONSE:** The department believes that the issue raised by the commenter warrants further consideration by the department. However, the new rule addresses reimbursement methodology for determining market-based dispensing fees, rather than cost of providing care and drug acquisition cost. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a contracted pharmacy that provides hemophilia factor and receives federal, public health service pricing under the Public Health Services Act commented that the section of the proposed reimbursement methodology which allows the department to pay for actual shipping costs for such entities will still not reimburse them for many of the costs which are uniquely associated with the pharmaceutical treatment of hemophilia patients. The commenter states that in order to satisfy federal requirements for participation in this program, a pharmacy has been specially created with the sole purpose of receiving, packaging, and distributing hemophilia-related products.

**RESPONSE:** The department believes that the supplemental dispensing fee in the amount of the actual cost of shipping is adequate. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a contracted pharmacy that provides hemophilia factor stated that the reduction in reimbursement impairs their ability to provide cognitive services that their patients need to survive. The proposed rates do not cover the cost of inventory or refrigeration of these special products.

**RESPONSE:** The department disagrees. The department believes that the section of the adopted rules that addresses the supplemental fee paid to providers that obtain public health service pricing for dispensing hemophilia-related products will provide the necessary access to the entire range of services entailed. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, several pharmacists that serve long-term care facilities stated that many of the residents of these facilities that ultimately become Medicaid eligible will receive necessary pharmacy services while their eligibility status is pending. The commenter states that because the Medicaid program will not reimburse for prescriptions provided until eligibility is certified, the state, in effect, receives an interest free loan from the pharmacist. The commenter states that the cost of carrying these accounts receivable should be born by the state.

**RESPONSE:** This comment relates to the client eligibility determination process and the issue of when payments for covered services can begin, rather than with the methodology for determining the dispensing fee. These issues are covered in other sections of the TDH rules. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, the representative for the Texas Health Care Association (THCA) stated that neither THCA nor the Texas Department of Human Services (TDHS) was aware of the proposed rule change.

**RESPONSE:** The department satisfied the legal obligation regarding notification and publication of the proposed rule (see 20 TexReg 10474-10476, 10660-10662, December 12, 1995). Additionally, TDHS staff have been informed of the progress of the rule. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a commenter representing pharmacies that serve long-term care facilities stated that the comparison with the ERS system does not appropriately capture the differences between the two populations being served. The commenter states that the Medicaid long-term care population tends to be older and more frail, have complex medication regimens, are confined to the facility, and lack any discretionary funds. The commenter states that the dispensing fee methodology should recognize these differences.

**RESPONSE:** The department disagrees. The department believes that this population will be adequately served under a market-based approach. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a commenter representing pharmacies that serve long-term care facilities stated that these pharmacies

provide unit dose packaging and special delivery services that will not be adequately reimbursed under the new rule. These differences should be considered in developing a market-based methodology.

**RESPONSE:** The department disagrees. The department does not believe that contracted pharmacies which are typically closed to retail business and which provide services exclusively to long-term care facilities inherently have a higher total cost of operation as a result of the population they serve and the services they offer. While there may be some elements of the cost structure for a closed pharmacy which exceed that of a retail, independently owned pharmacy, there are also offsetting, reduced expenditures that are not available to the more traditional pharmacy operation. These would include, but not be limited to, reduced rents since location is unlikely to be as important to the closed pharmacy, better drug purchases through volume discounts not available to independent pharmacists, and natural economies of scale generally associated with serving a specialized population. The department also believes that some of the services being provided, such as the "Drug Distribution Systems" are, perhaps, more appropriately recognized as part of the Medicaid Nursing Home program. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a commenter representing pharmacies that serve long-term care facilities stated that these types of providers also incur additional administrative burden as a result of the department's policy concerning documentation for H2 Antagonists. The commenter stated that the pharmacy must obtain written documentation not required of other medications. The commenter states that the department should reimburse these providers for the additional requisite paperwork.

**RESPONSE:** The department disagrees. While the additional paperwork required is minimal, extra time is provided to the pharmacy for submitting the necessary documentation, hand-delivery is not required, and faxed copies are acceptable. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a commenter representing pharmacies that serve long-term care facilities stated that this type of facility incurs cost totaling \$3.16 over and above that which other providers incur. The commenter states that reimbursement to such providers should be in excess of \$8.00, since the most recent cost reports indicate a median cost of \$5.01 to dispense each prescription.

**RESPONSE:** The department disagrees. There is no indication that the \$5.01 is representative of a market-based determination. Since these types of providers do not provide cost report information to the department, the use of cost report information from traditional pharmacy providers that contains no data on these types of providers is incomplete. No changes were made as a result of this comment.

**COMMENT:** Concerning §35.611, a representative for the Texas Pharmacy Association stated that there must be reasoned justification for administrative rules, and in his opinion, that requirement has not been met.

**RESPONSE:** The department disagrees. The department believes it has satisfied the applicable legal requirements regarding the reasoned justification for adoption of the new rule by: holding public hearings for the purpose of receiving comments to the rule as proposed; by receiving written comments to the rule as proposed for a 30 day comment period; by summarizing all the comments to the rule received by the department; by stating in the adoption preamble why the department disagrees with certain comments received; and, by making one editorial change to the rule in response to comments received with which the department agrees. The factual basis for adopting the new rule is as follows. The January 10, 1995 Legislative Budget Board report to the Texas Legislature, specifically required the department to modify the Vendor Drug Program's reimbursement methodology to reduce the dispensing fee to reflect market practices and rates, as stated in Rider 25 to the department's provisions of the General Appropriations Act for the 1996-1997 biennium. Following this report, the department and its consultants performed further review and analysis of other comparable, third-party arrangements in which prescription services are provided throughout the state. One analysis, which serves as the primary basis for the new rule, is a detailed comparison with the Texas Employees' Retirement System (ERS), which the department determined to be the system which most closely resembles the Texas Medicaid Vendor Drug Program. The market-based dispensing fee was calculated so that the total reimbursement would be comparable to the ERS system.

These results were further confirmed with subsequent comparisons with other statewide, third party insurance programs. Rider 44 to the department's provisions of the General Appropriations Act for the 1996-97 biennium instructed the department to review the need for a special dispensing fee for rural areas. The department determined that a supplemental payment of \$1.00 for rural areas, as defined by the Office of Management & Budget, will serve to ensure adequate access to these rural areas. In response to comments received, the department also determined that payment of one additional supplemental dispensing fee would be appropriate in order to ensure adequate access to pharmacy services for Medicaid recipients. Finally, the department believes that employing a market-based reimbursement methodology recognizes the reality of the environment within which these services are provided. The department recognizes the changes that are occurring in the market place for all health care services, and that continued reliance on a reimbursement system that is cost-based results in decreased efficiency because of the absence of incentives for providers to reduce costs. The department believes that the new rule will maintain adequate access to pharmacy services for Medicaid recipients, as well as enhance the efficient operation of the Medicaid program. No changes were made as a result of this comment.

Comments were received from several independent and community-based pharmacists, representatives of pharmacies serving long-term care facilities, pharmacists serving Medicaid recipients with special needs, a representative of the Texas Federation of Drug Stores, and representatives of the Texas Pharmacy Association and the Texas Health Care Association.

The department received comments in opposition to the proposed rule; comments which favored maintenance of the current rule, but recognized the need to reduce the dispensing fee; comments which were critical of the department's review of the need for a special Medicaid dispensing fee for pharmacists in rural areas; and, comments which were critical of the analysis performed by the department and its consultant. The department disagrees with the comments that favored maintaining the current rule. The department also disagrees with the comments in opposition to the new rule which establishes the market-based reimbursement methodology. The department agrees with the comments received regarding the need to ensure adequate access to pharmacy services, and has made one editorial change to allow for payment of an additional supplemental dispensing fee in order to ensure adequate access to pharmacy services for Medicaid recipients.

## Subchapter F. Reimbursement

### • 25 TAC §35.611

The new section is adopted under the Human Resource Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

#### §35.611. Dispensing Fee.

(a) Factors for determining dispensing fee(s). The Texas Department of Health (department) shall reimburse contracted Medicaid pharmacy providers for prescription dispensing services provided to Medicaid recipients on a market-related basis.

(1) The department shall take into consideration current market conditions, practices, and levels of reimbursement, including payments made by other third-party payers, and other comparable purchasing arrangements.

(2) The department shall consider the need to establish a supplemental dispensing fee for pharmacies located in rural communities.

(3) The department shall consider the need to control the costs of expensive hemophilia-related products.

(b) Dispensing fee(s). The Texas Board of Health (board), upon approval of the Health and Human Services Commission, shall

determine the dispensing fee(s) based upon the factors set forth in subsection (a) of this section and upon the availability of funds.

(1) Dispensing fees shall be determined prospectively.

(2) The board shall review current market conditions, practices, and levels of reimbursement at least every two years.

(3) The dispensing fee shall be \$3.00 per prescription.

(c) Supplemental dispensing fee(s).

(1) Pharmacies that are located in a rural area shall be paid a supplemental dispensing fee of \$1.00 per prescription. For the purposes of this subsection, "rural area" means a non-metropolitan area as defined by the Office of Management and Budget (OMB), Office of the President of the United States. The table in paragraph (3) of this subsection lists the 27 metropolitan statistical areas (MSAs) in Texas. All other counties are considered as non-MSAs and will receive the supplement.

(2) A supplemental dispensing fee in the amount of the actual cost of shipping shall be paid to:

(A) a provider for dispensing a hemophilia-related product which is subject to public health service pricing under the Veterans Health Care Act of 1992; and

(B) the nearest participating provider in order to ensure adequate access to pharmacy services for Medicaid recipients.

(3) The following table provides the list of counties that currently comprise the OMB's definition of a Metropolitan Statistical Area for Texas. All other Texas counties shall receive the supplemental dispensing fee payment of \$1.00.

Figure 1: 25 TAC §35.611(c)(3)

(d) Effective date. This section is effective March 1, 1996.

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601285

Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: March 1, 1996

Proposal publication date: December 12, 1995

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

## Subchapter I. Support Documents

### • 25 TAC §35.901

The repeal is adopted under the Human Resource Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted to the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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

Issued in Austin, Texas, on January 30, 1996.

TRD-9601286

Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: March 1, 1996

Proposal publication date: December 12, 1995

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Chapter 97. Communicable Diseases

Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)

• 25 TAC §97.135

The Texas Department of Health (department) adopts an amendment to §97.135, concerning mandatory serologic testing of women for syphilis and HIV during pregnancy and delivery, with changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8961).

The amendment implements Chapter 805 of the 74th Texas Legislature which requires the Board of Health to adopt standards for mandatory serologic testing of women for human immunodeficiency virus (HIV) during pregnancy and delivery. The amendment requires the physician or a person permitted by law to attend a pregnant woman and to provide printed materials about HIV, acquired immune deficiency syndrome (AIDS), and syphilis to the woman; submit a blood sample from the woman for a serologic test for HIV unless the woman objects; and provide or make available information relating to treatment of HIV infection and AIDS to women whose serologic HIV test and confirmatory test show that they are or may be infected with HIV or AIDS.

The section will provide a means for educating pregnant women about HIV, AIDS, and syphilis through distribution of printed material; the early detection of HIV in pregnant women and early intervention to prevent transmission of HIV to newborns; post-test counseling; and increased awareness in the prevention of HIV and syphilis transmission.

The following comments were received concerning the proposed text.

Comment: Concerning §97.135 (d)[(c)], two commenters stated that it was unclear that HIV testing could not be done during delivery without the woman's consent to be tested.

Response: The department agreed and added language to state that the woman must consent to the HIV test.

Comment: Concerning §97.135 (f)(C), a commenter suggested that language be added which stresses the reduction of perinatal transmission of HIV.

Response: The department agreed and added the suggested language.

The commenters were Texas AIDS Network and Travis County HIV Educators Network. Both commenters were in favor of the rules, but both suggested adding language for clarification.

The amendment is adopted under the Texas Health and Safety Code Ann §81.004(b) which provides the Texas Board of Health (board) with the authority to adopt rules necessary of the effective implementation regulations regarding Chapter 81, Communicable Diseases; Health and Safety Code §81.090 which provides for serologic testing of pregnant women for syphilis and HIV; and Health and Safety Code §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

*§97.135. Serological Testing for Syphilis and HIV During Pregnancy and Delivery.*

(a) At the time of first examination and visit, every physician or other person permitted by law to attend a pregnant woman during gestation or at the delivery of the infant resulting from such pregnancy shall for every woman so attended:

(1) distribute to the woman printed materials about HIV, AIDS and syphilis which shall be provided by the Texas Department of Health and note on the woman's medical record that the distribution was made;

(2) verbally notify the woman that an HIV test will be performed if the patient does not object and note on the medical records that verbal notification was given;

(3) advise the woman that the result of the test taken under this section is not anonymous, and explain the difference between an anonymous and confidential test; and

(4) take or cause to be taken a sample of the blood of the woman and submit such sample to a laboratory certified by the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88; 42 United States Code §263a), for:

(A) a standard serological test for syphilis; and

(B) a standard serological test for HIV infection in accordance with §97.131 of this title (relating to Definitions).

(b) (No change.)

(c) If the woman objects to the test for HIV infection under subsection (a)(4)(B) of this section, the physician or other person may not conduct the test. The physician or other person shall refer the woman who objects to the test to an anonymous testing site or instruct the woman about anonymous testing methods.

(d) A specimen of blood may be taken from the umbilical cord after it has been cut only if the person attending the delivery of an infant or fetus is not authorized by law or regulation to draw a specimen of blood from the mother. If a specimen of umbilical cord blood cannot be obtained by this person, he/she will arrange for a collection of a blood sample from the mother or the infant within 24 hours of delivery by a person authorized to do so. Consent for testing must be obtained in accordance with subsection (a)(2) of this section.

(e) Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy.

(f) If the serologic screening and confirmatory test for HIV conducted under subsection (a)(4)(B) of this section shows that the woman is or may be infected with HIV, the physician or other person who submitted the sample for the test shall:

(1) provide or make available to the woman information relating to treatment of HIV infection and acquired immune deficiency syndrome, or refer the woman to an entity that provides treatment for individuals infected with HIV or acquired immune deficiency syndrome; and

(2) provide or make available to the woman post-test counseling which includes:

(A) the meaning of the test result;

(B) the possible need for additional testing;

(C) measures to prevent the transmission of HIV, especially the reduction of perinatal transmission;

(D) the availability of appropriate health services;

(E) the benefits of partner notification and the availability of partner notification programs;

(F) increased understanding of HIV infection;

(G) explanation of potential need for confirmatory testing;

(H) explanation of behavior changes to decrease the potential of HIV transmission;

(I) encouragement to seek appropriate medical care; and

(J) encouragement to notify persons with whom there has been contact capable of transmitting HIV.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601236 Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: February 19, 1996

Proposal publication date: October 31, 1995

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

## Chapter 169. Zoonosis Control

### Rabies Control and Eradication

- 25 TAC §§169.22, 169.23, 169.25-169.29, 169.31, 169.33, 169.34

The Texas Department of Health (department) adopts amendments to §§169.22, 169.23, 169.25-169.29, 169.31, 169.33, and 169.34, concerning rabies control procedures. Sections 169.25-169.27, 169.29, 169.33, and 169.34 are adopted with changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9128). Sections 169.22, 169.23, 169.28, and 169.31 are adopted without changes and will not be republished.

The amendments reflect the need for enhanced public health safety measures to be implemented because of two rabies epizootics occurring in Texas; indicate that the department's Bureau of Veterinary Public Health has been abolished and the responsibilities listed in these sections are now under the Zoonosis Control Division; clarify terms used in the sections; expand humane and security requirements for rabies quarantine facilities; clarify that the age for initial rabies vaccination of dogs and cats is three months; mandate that only rabies vaccine with a three-year duration of immunity in dogs be used; clarify the procedure for submitting specimens for rabies testing; and reflect amendments to Texas Health and Safety Code, Chapter 826, Chapter 44, Acts of the 74th Legislature, Regular Session, 1995. Chapter 44 changed the name of the local health authority for rabies control in Chapter 826 to the local rabies control authority in order to minimize ambiguity and restricted the movement within and from Texas of animals at high risk for transmitting rabies.

The sections cover definitions, information relating to the control of rabies, reports of human exposure to rabies, facilities for the quarantining of animals, quarantine method and testing, public and private entities that operate a quarantine facility, vaccination requirement for dogs and cats, submissions of specimens for laboratory examination and area quarantine.

The following comments were received concerning the proposed sections.

COMMENT: One commenter requested that a reference be given in §169.25(c) to clarify what the term "appropriate action" means.

RESPONSE: The department agrees and will add language to reference §169.27.

COMMENT: One commenter requested that the term "low risk animals" be defined in §169.22.

RESPONSE: The definition of low risk animal is located in §169.22.

COMMENT: One commenter believes that, because 30 days are required after the vaccine is administered for a dog or cat to be "currently vaccinated," any animal that is vaccinated at three months and one day would be in violation of the law because the Texas Health and Safety Code, Chapter 826 mandates that dogs and cats be vaccinated by four months of age. The commenter also believes that requiring the injection be given to the animal by the time it reaches four months of age is more reasonable.

RESPONSE: The department believes that the threat of rabies due to the epizootics allows little leeway for laxity in vaccinating dogs and cats. Chapter 826 states that dogs and cats must be "vaccinated" by four months of age, not "currently vaccinated." The law also gives the Board of Health the option of changing that age. Therefore, requiring that the injection be given at three months of age is not inconsistent with statutory law and is in the best interest of public health.

COMMENT: One commenter requested that triennial rabies vaccine be mandated in only those species for which it is approved and that annual vaccine be acceptable in other species.

RESPONSE: The department will add language to reflect that only a rabies vaccine which has a three-year duration of immunity in dogs may be used according to label directions in any species for which it is approved.

COMMENT: Two commenters believed that the new maximum temperature requirement for animal shelters would necessitate adding air conditioning to the facility and would exacerbate already existing budget problems.

RESPONSE: The department does not want to impose unfunded mandates that would place hardships on local governments. Therefore, the department has changed the wording to a more liberal interpretation of humane conditions without referencing temperature requirements.

COMMENT: Two commenters believed that it would place a financial burden on cities and counties operating animal shelters if they are required to vaccinate all dogs and cats prior to release.

RESPONSE: The department has removed the words "or custodian" in §169.29.

COMMENT: Several comments were received regarding the handling of domestic ferrets which have bitten humans.

RESPONSE: The department appreciates these concerns; however, the department is required to propose rules to allow comments from domestic ferret owners before finalizing these rules. Therefore, the department is proposing amendments in the near future to include domestic ferrets.

Several of the commenters were individuals who were generally in favor of the rules but requested clarification.

Commenters who were not in favor of the amendment to §169.29 were the City of Plano and the Texas Municipal League, both of which believed that requiring that all dogs and cats be vaccinated against rabies prior to adoption or reclamation from an animal shelter would place financial burdens on the animal shelters.

Commenters who were not in favor of the amendment to §169.26 were the Victoria City-County Health Department and the Texas Municipal League, who felt that the temperature requirements for quarantine facilities would require the animal shelters to install air conditioning, which is an expense they could not afford.

The amendments are adopted under the Texas Health and Safety Code, Chapter 826, "Rabies," §826.011, which provides the board with the authority to administer the rabies control program and adopt rules necessary to effectively administer this program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

*§169.25. Reports of Human Exposure to Rabies.*

(a) Any person having knowledge of a potential rabies exposure to a human as defined in the Texas Health and Safety Code, §826.041 will report the incident to the local rabies control authority as soon as possible, but not later than 24 hours from the time of the incident. This requirement does not apply to bites by low risk animals as defined in §169.22 of this title (relating to Definitions).

(b) The owner or custodian of the potentially rabid animal will place that animal in quarantine or submit it for testing as prescribed in §169.27 of this title (relating to Quarantine Method and Testing).

(c) The local rabies control authority will investigate each potential exposure and assure appropriate resolution, in accordance with §169.27.

*§169.26. Facilities for the Quarantining of Animals.*

(a) Generally.

(1) Structural strength. Housing facilities shall be structurally sound and shall be maintained in good repair in order to protect the animals from injury, to contain them, and to prevent exposure to other animals and the public.

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

(6) Management. The manager of a quarantine facility should be either a licensed veterinarian or an individual who has satisfactorily completed an appropriate TDH training course.

(b) Facilities-indoor.

(1) Heating. Indoor housing facilities shall be sufficiently heated when necessary to protect the animals; the room temperature must not fall below 50 degrees Fahrenheit (7.2 degrees Celsius) for more than four consecutive hours at any time dogs or cats are present.

(2) Cooling and Ventilation. Indoor housing facilities shall be adequately cooled and/or ventilated to provide for the health and comfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation.

(3) Lighting. Indoor housing facilities shall have ample light of sufficient intensity to permit routine inspection and cleaning during the entire work period. Primary enclosures shall be situated to protect the animals from excess illumination.

(4) Interior surfaces. The interior building surfaces shall be constructed and maintained so that they are impervious to moisture and may be readily sanitized.

(5) Drainage. A suitable method shall be provided to rapidly eliminate excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors therefrom. If closed drainage systems are used, they shall be equipped with traps and so installed as to prevent any backup of sewage onto the floor of the room.

(c)-(h) (No change.)

*§169.27. Quarantine Method and Testing.*

(a) When a domestic dog or cat which has bitten a human has been identified, the owner or custodian will be required to place the animal in quarantine. Unvaccinated animals should not be vaccinated against rabies during the observation period. The ten-day observation period will begin on the day of the bite incident. The animal must be placed in a Texas Department of Health (depart-

ment) approved facility specified by the local rabies control authority and observed at least twice daily. However, the owner or custodian of the animal may request permission from the local rabies control authority for home quarantine if the following criteria can be met.

(1) Secure facilities must be available at the home of the animal's owner or custodian, and must be approved by the local rabies control authority.

(2) (No change.)

(3) The local rabies control authority or a licensed veterinarian must observe the animal at least on the first and last days of the quarantine period. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal. At the end of the observation period, the release from quarantine must be accomplished in writing.

(4) The animal was not a stray (as defined in the Texas Health and Safety Code, §826.002) at the time of the bite.

(b) A domestic animal which has bitten a human and has been designated by the local rabies control authority as unclaimed may be humanely killed in such a manner that the brain is not mutilated. The brain shall be submitted to a department certified laboratory for rabies diagnosis.

(c) (No change.)

(d) If the biting animal is a low risk animal, neither quarantine nor rabies test will be required unless the local rabies control authority has cause to believe the biting animal is rabid, in which case it should be humanely killed and tested for rabies.

(e) The local rabies control authority may require an animal which has inflicted multiple bite wounds, punctures, or lacerations to the face, head, or neck of a person to be humanely killed and the brain tested for rabies.

(f) If the biting animal is not included in subsection (a), (b), (c), (d), or (e) of this section, the biting animal will be humanely killed and the brain tested for rabies or the local rabies control authority may require the animal to be confined for a 30-day observation period as an alternate method to killing and testing, otherwise conforming to the requirements delineated in subsection (a) of this section.

(g) (No change.)

(h) Currently vaccinated guide dogs in service or currently vaccinated police dogs when a bite is inflicted in the line of duty shall not be required to be placed in quarantine.

*§169.29. Vaccination Requirement.*

(a) The owner of each dog or cat shall have the dog or cat vaccinated against rabies at three months of age or earlier as prescribed by the United States Department of Agriculture (USDA) and within each subsequent 12-month interval thereafter. Only USDA-licensed rabies vaccines with a three-year duration of immunity in dogs or a vaccine which has been licensed for less than two years, and for which testing to obtain approval for three-year duration of immunity is in progress, may be used according to label directions in any species for which it is approved.

(b)-(c) (No change.)

(d) If a veterinarian ceases the practice of veterinary medicine, the duplicate rabies vaccination certificates retained by that practice shall be turned over to the local rabies control authority. This does not apply to the sale or lease of a practice, when the records of the practice are transferred to a new owner.



§169.33. *Submission of Specimens for Laboratory Examination.*

Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

(1) Damage to the brain caused by shooting or other traumatizing procedures shall be avoided.

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

(4) If specimens are shipped, two containers shall be used for packing.

(A) The immediate (inner) container. Only one head shall be placed in each immediate container which shall be double plastic bags. Attach the owner's name or an identification number to each double-sealed plastic bag. Adhesive tape is useful. Do not use masking tape. A completed Texas Department of Health Form G-9, Rabies Submission Form, which is available at the department's Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, shall be placed in a separate water-proof bag. The form must contain identical information as located on the specimen bag. One form is required for each head submitted.

(B) *The shipping (outer) container.*

(i) The immediate container(s) shall be placed in an insulated shipping container of adequate strength to withstand shipping conditions, such as a styrofoam container inside a cardboard box.

(ii) Sufficient refrigerant shall be added so the head will remain chilled for a minimum of 48 hours. Do not use dry ice. Gel packs or similar refrigerants are recommended. Ice is not recommended but, if used, must be doubled-bagged in heavy-duty plastic bags.

(iii) Packing material, such as newspaper, shall be added to absorb water and blood in the event of leakage and buffer the specimens.

(iv) Submission form(s) shall be placed in a water-proof bag on top of the packing material, just under the box top.

(v) Labeling on the outside of the shipping container shall be legible and include:

(I) name, address, and phone number of the appropriate laboratory (listed in paragraph (6) of this section);

(II) the return address, name, and telephone number of the shipper; and

(III) the following statement: "RABIES SUSPECT-REFRIGERATE ON ARRIVAL."

(5) The following procedures are required for shipment:

(A) shipment shall be by bus or other reliable carrier; the department does not recommend the United States Postal Service. If an overnight carrier is used, such as United Parcel Service (UPS) or Federal Express, ship the specimen such that it will arrive by Friday or delay shipment until Monday. These services do not deliver to the department on the weekend;

(B) (No change.)

(C) at the time of the shipment, the shipper shall telephone the appropriate laboratory and notify laboratory personnel of the shipment; and

(D) the shipper shall provide the return postage (in the form of stamps, not money) if return of the shipping container is desired.

(6) The certified laboratories in Texas are:

(A) Austin-Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone the rabies shipment notification hotline at 1-800-252-8163, or the local telephone at: (512) 458-7598 or (512) 458-7515.

(B)-(C) (No change.)

(D) San Antonio-Laboratory, San Antonio Metropolitan Health District, 332 West Commerce Street, Room 203, San Antonio, Texas 78205, (210) 207-8780.

§169.34. *Area Quarantine.*

(a) Introduction. The purpose of these rules is to prevent the spread of the south Texas canine, and Texas fox rabies epizootics in accordance with Texas Health and Safety Code, §826.045. This rule will be administered with the cooperation of the governing bodies of counties and municipalities within the quarantine area.

(b) (No change.)

(c) Declaration. The board declares an area rabies quarantine.

(1) (No change.)

(2) Animals subject to the area quarantine. Any live: domestic dog, wolf-dog hybrid, or cat over three months of age for which an official rabies vaccination certificate as described in §169.29(b) of this title (relating to Vaccination Requirement) cannot be produced, or coyote (*Canis latrans*), raccoon (*Procyon lotor*), or species of foxes indigenous to North America, is subject to the area quarantine.

(3) Transport exceptions. Animals subject to the area quarantine may be transported by employees or contractors of governmental entities, when such transport is a part of their official duty. If an exempt individual transports such animals for release, the animals must be released within a ten-mile radius or within ten miles of the city limits of where they were originally captured.

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

(f) Prohibited acts. A person shall not remove from, nor transport within the area quarantine, any animal described in subsection (c)(2) of this section. For dogs and cats, submission to the court of a valid rabies certificate issued prior to the date of the citation or a signed euthanasia release form describing the transported animal, shall be a valid defense to a charge of violation of this quarantine.

(g) Special provisions for rehabilitation of raccoons. Raccoons being rehabilitated shall be:

(1) vaccinated with a vaccine approved for use in raccoons by the United States Department of Agriculture and held for 30 days after vaccination without clinical signs of rabies;

(2) released within a ten-mile radius or within ten miles of the city limits of where they were originally captured; and

(3) transported by employees or contractors of a city or county animal control agency.

(h) Rehabilitation of other wild animals. Rehabilitation of other wild animals listed in subsection (c)(2) of this section is prohibited.

(i) Violation of quarantine. As provided in Texas Health and Safety Code, §826.046:

(1) a person commits an offense if the person violates or attempts to violate subsection (f) of this section; and

(2) an offense is a Class C misdemeanor.

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 January 30, 1996.

TRD-9601325 Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: February 21, 1996

Proposal publication date: November 3, 1995

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



The Texas Department of Health (department) adopts amendments to §§169.62-169.64; repeal of §169.65; and new §169.65, concerning training and certification of animal shelter personnel. Section 169.62 is adopted with changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9128). The repeal of §169.65, amendments to §169.63 and §169.64, and new §169.65 are adopted without changes and therefore will not be republished.

The amendments and the repeal remove requirements of the department to provide for the certification of animal shelter personnel and the new section will define the training as prescribed in Texas Health and Safety Code, §823.004. Also, the amendments provide clarification of the term "course" as it pertains to the training of animal shelter personnel.

The sections define levels of proficiency, prerequisites for certification, and certification of proficiency of animal shelter personnel.

The following comments were received concerning the proposed sections.

COMMENT: One commenter stated that the verbiage "Any training session" in the definition of "course" gave the implication that it could be any continuing education course, not the specific training courses offered for different levels of proficiency in the program.

RESPONSE: The department agrees and has changed the wording to "An appropriate training session."

COMMENT: One commenter stated the department should continue to maintain the certification portion of the training program for animal shelter personnel.

RESPONSE: The department believes that this would not be in the best interest of the animal shelter personnel training program. Chapter 823 of the Texas Health and Safety Code only mandates that the department conduct appropriate training of animal shelter personnel, not certification. The certification portion of the program has grown to the extent that maintenance of it has negatively impacted the development of the training portion of the program, which is important from a public health standpoint. Additionally, the Texas Animal Control Association, the professional organization for animal control officers, has agreed to maintain the certification portion.

The commenters were one individual and a representative of the City of Plano, who were generally in favor of the amendments but requested clarification and expressed concerns regarding certification.

### Training of Animal Shelter Personnel

#### • 25 TAC §§169.62-169.65

The amendments and new section are adopted under the Texas Health and Safety Code, §823.004, which provides the board with the authority to prescribe standards for training animal shelter personnel in animal health and disease control, humane care and treatment of

animals, control of animals in an animal shelter, and the transportation of animals; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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

Course—An appropriate training session administered by the Texas Department of Health for basic animal control officers, advanced animal control officers, or administrative animal control officers.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601234 Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: February 19, 1996

Proposal publication date: November 3, 1995

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



#### • 25 TAC §169.65

The repeal is adopted under the Texas Health and Safety Code, §823.004, which provides the board with the authority to prescribe standards for training animal shelter personnel in animal health and disease control, humane care and treatment of animals, control of animals in an animal shelter, and the transportation of animals; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601235 Susan K. Steeg  
General Counsel  
Texas Department of Health

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Proposal publication date: November 3, 1995

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



## Chapter 229. Food and Drug

### Licensure of Wholesale Device Distributors

#### • 25 TAC §229.444

The Texas Department of Health (department) adopts new §229.444, concerning the Device Distributors and Manufacturers Advisory Committee, with changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8962).

The new section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, and reports to the board.

The new section allows the department to establish an advisory committee for medical device distributors and manufacturers as required by Health and Safety Code, §431.275, for the purpose of advising the board in the development of standards and procedures relating to the licensing of distributors and manufacturers of medical devices.

No comments were received regarding adoption of the new section; however the Board of Health added clarifying language regarding the composition of the committee in subsection (f)(2).

The new section is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function; and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the Commissioner of Health.

*§229.444. Device Distributors and Manufacturers Advisory Committee.*

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Device Distributors and Manufacturers Advisory Committee (committee).

(2) The committee is required to be established by the Texas Board of Health (board) by Health and Safety Code, §431.275.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of licensure of device distributors and manufacturers.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to licensing of device distributors and manufacturers.

(2) The committee shall advise the board in the development of standards and procedures relating to the licensing of device distributors and manufacturers; make recommendations to the board relating to the content of the rules adopted to implement the licensing of device distributors and manufacturers; and perform any other functions requested by the board to implement and administer the rules regarding the licensing of device distributors and manufacturers.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By September 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of five members appointed by the board. The composition of the committee shall include:

(1) two consumer representatives; and

(2) three nonconsumer representatives, to include device distributors and manufacturers.

(g) Terms of office. The term of office of each member shall be three years.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each odd numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. *Roberts Rules of Order, Newly Revised*, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each August. It shall be signed by the presiding officer and appropriate department staff.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601240 Susan K. Steeg  
General Counsel  
Texas Department of Health

Effective date: February 19, 1996

Proposal publication date: October 31, 1995

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

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*Part II. Texas Department of Health (Editor's Note: The following adopted sections submitted by the Texas Department of Health will be serialized beginning in the February 13, 1996 issue of the Texas Register.*

The effective date for these sections is February 19, 1996.

## Chapter 295. Occupational Health

### Texas Environmental Lead Reduction

• 25 TAC §§295.201-295.216, 295.218-295.220 (new)

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**TITLE 37. PUBLIC SAFETY AND CORRECTION**

## Part XIII. Texas Commission on Fire Protection

### Chapter 421. Standards for Certification

• 37 TAC §421.3

The Texas Commission on Fire Protection adopts an amendment to §421.3, concerning minimum standards set by the commission, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9399).

The justification for this section is that participation in the IFSAC accreditation process insures that Texas certification requirements comply with national standards for testing and training of fire protection personnel and benefits Texas fire fighters by increasing their mobility to other accredited jurisdictions.

The change to this section adds language concerning objectives of the commission, to recognize the participation of the commission in the accreditation program outlined by the International Fire Service Accreditation Congress (IFSAC), by allowing the commission to grant individuals from Texas IFSAC certification. The amendment has an effective date of January 1, 1997.

No comments were received on the adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum requirements for fire protection personnel.

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 January 29, 1996.

TRD-9601227 Jack Woods  
General Counsel  
Texas Commission on Fire Protection

Effective date: January 1, 1997

Proposal publication date: November 14, 1995

For further information, please call: (512) 918-7189

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## Chapter 423. Fire Suppression

### Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

#### • 37 TAC §423.11

The Texas Commission on Fire Protection adopts new §423.11, concerning International Fire Service Accreditation Congress (IFSAC) certification, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9399).

The justification for this section is that participation in the IFSAC accreditation process insures that Texas certification requirements comply with national standards for testing and training of fire protection personnel and benefits Texas fire fighters by increasing their mobility to other accredited jurisdictions.

The new section allows individuals holding current Texas certification as structural fire protection personnel to apply for IFSAC certification. The new section has an effective date of January 1, 1997.

No comments were received on the adoption of the new section.

The new section is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum requirements for fire protection personnel.

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 January 29, 1996.

TRD-9601228      Jack Woods  
                            General Counsel  
                            Texas Commission on Fire Protection

Effective date: January 1, 1997

Proposal publication date: November 14, 1995

For further information, please call: (512) 918-7189



## Chapter 427. Certified Training Facilities

#### • 37 TAC §§427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19

The Texas Commission on Fire Protection adopts new §§427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, and 427.19, concerning certified training facilities for paid fire protection personnel, without changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7175).

The justification for these sections is administrative convenience.

The new sections replace repealed sections dealing with the same subject matter. The new sections are being renumbered to correct the omission of §427.5.

No comments were received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.028(2), which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

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 January 29, 1996.

TRD-9601230      Jack Woods  
                            General Counsel

Effective date: February 19, 1996

Proposal publication date: September 12, 1995

For further information, please call: (512) 918-7189



#### • 37 TAC §§427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19, 427.21

The Texas Commission on Fire Protection adopts the repeal of §§427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19, and 427.21, concerning certified training facilities for paid fire protection personnel, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7027).

The justification for these repeals is administrative convenience.

The repealed sections are replaced by new sections dealing with the same subject matter.

No comments were received on the adoption of the repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.028(2), which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

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 January 29, 1996.

TRD-9601229      Jack Woods  
                            General Counsel  
                            Texas Commission on Fire Protection

Effective date: February 19, 1996

Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7189



## Chapter 437. Fees

#### • 37 TAC §437.3

The Texas Commission on Fire Protection adopts an amendment to §437.3, concerning certification fees, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9400).

The justification for this section is that local governments that employ previously certified fire protection personnel will not incur costs associated with proficiency testing that the commission deems unnecessary.

The amendments conform subsection (f) to other rule changes concerning fire instructor certification and change the language in subsections (h), (i) and (j) relating to certificate expiration to allow recertification without testing to the extent permitted by Government Code, §419.034. The amendment has an effective date of March 1, 1996.

No comments were received on the adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.026, which provides the commission with authority to establish fees for certification and examinations; and Texas Government Code, §419.034, which provides the commission with authority to establish standards for certificate renewal.

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 January 29, 1996.

TRD-9601232 Jack Woods  
General Counsel  
Texas Commission on Fire Protection

Effective date: March 1, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 918-7189

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• 37 TAC §437.17

The Texas Commission on Fire Protection adopts new §437.17, concerning fees for International Fire Service Accreditation Congress seals, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9400).

The justification for this section is that participation in the IFSAC accreditation process insures that Texas certification requirements comply with national standards for testing and training of fire protection personnel and benefits Texas fire fighters by increasing their mobility to other accredited jurisdictions.

The new section allows the commission to charge a fee for individual IFSAC seals. The new section has a proposed effective date of January 1, 1997.

No comments were received on the adoption of the new section.

The new section is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum requirements for fire protection personnel.

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 January 29, 1996.

TRD-9601231 Jack Woods  
General Counsel  
Texas Commission on Fire Protection

Effective date: January 1, 1997

Proposal publication date: November 14, 1995

For further information, please call: (512) 918-7189

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Chapter 439. Examinations for Certification

• 37 TAC §439.15

The Texas Commission on Fire Protection adopts an amendment to §439.15, concerning testing for certification status, without changes to the proposed as text published in the November 14, 1995, issue of the *Texas Register* (TexReg 9401).

The justification for this section is that local governments that employ previously certified fire protection personnel will not incur costs associated with proficiency testing that the commission deems unnecessary.

The amendment imposes a testing requirement on individuals whose certificate has been expired for one year or longer instead of referring to "inactive status." The amendment has an effective date of March 1, 1996.

No comments were received on the adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.026, which provides the commission with authority to establish fees for certification and examinations; and Texas Government Code, §419.034, which provides the commission with authority to establish standards for certificate renewal.

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 January 29, 1996.

TRD-9601233 Jack Woods  
General Counsel  
Texas Commission on Fire Protection

Effective date: March 1, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 918-7189

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

The Texas Department of Human Services (DHS) adopts the repeal of §47.5901 and new §47.5901 in its Primary Home Care chapter. New §47.5901 is adopted with changes to the proposed text as published in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5737). The repeal of §47.5901 is adopted without changes to the proposed text and will not be republished. Section 47.5902 is being withdrawn in this issue of the *Texas Register*.

Also in this issue of the *Texas Register*, DHS is adopting related policies in Chapter 50 of this title and is withdrawing proposed new Chapter 20 and related policies in Chapters 19, 24, 46, 48, 50 and 52 of this title.

Justification for the adoption is to provide a better understanding of the reimbursement methodology due to inclusion of additional detail, and a single set of guidelines to facilitate financial accountability relating to service delivery.

The sections will function by clarifying current reimbursement methodology practice and incorporate cost report procedural changes. Family care services became an optional service under the Primary Home Care Program effective November 1, 1994. Therefore, the new sections also incorporate the reimbursement methodology for family care services into the rule chapter for primary home care. In addition, the proposal updates the methodology in order to base the determination of unit reimbursements on cost report data rather than on modeled analysis.

The department received no comments regarding the proposal. DHS, however, is making the following changes. In §47.5901(a) DHS is deleting a reference to proposed rules which will not be adopted. DHS is changing §47.5901(b)(10) and (11) and (c)(8) to clarify that field audits are not limited to on-site audits. In §47.5901(c) DHS is eliminating procedures for treatment of cost reports covering less than a full fiscal year until such time as comprehensive cost determination rules are proposed and adopted. DHS is changing §47.5901(c)(2)(B)(ii), and subsequently renumbering §47.5901(c)(2)(B)(iii) and revising §47.5901(c)(2)(C), to eliminate procedures for treatment of cost reports with low utilization or operation for less than a full fiscal year until such time as comprehensive cost determination rules are proposed and adopted. DHS is changing §47.5901(e)(9) to clarify that allowable employee entertainment expenses are reported as employee relations costs rather than as employee benefits.

## Support Documents

### • 40 TAC §47.5901

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

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 January 31, 1996.

TRD-9601329 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: February 21, 1996

Proposal publication date: August 1, 1995

For further information, please call: (512) 438-3765



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

*§47.5901. Reimbursement Methodology for Primary Home Care Services and Family Care Services.*

(a) General requirements. Cost reports pertaining to providers' fiscal years ending in calendar year 1994 or 1995 will be governed by the information in this section.

(b) Cost reporting. Provider agencies must submit financial and statistical information at least annually on cost report forms provided by the Texas Department of Human Services (DHS) or on facsimiles which are formatted according to DHS specifications and are preapproved by DHS staff. All contracted providers must submit a cost report unless the number of days between the date the first DHS client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the Rate Analysis Department of DHS before the due date of the cost report. The Texas Board of Human Services determines reimbursements as specified in §24.101 and §24.102 of this title (relating to General Specifications and Methodology).

(1) Cost report due date. Provider agencies must submit cost reports to DHS no later than 90 days following receipt of the cost report forms.

(2) Extension of due date. DHS may grant extensions of due dates for good cause. A good cause is defined as one that the provider agency could not reasonably be expected to control. Provider agencies must submit requests for extensions in writing to DHS before the cost report due date. Rate Analysis Department staff respond to requests within ten workdays of receipt.

(3) Reporting period. The provider agency must prepare the cost report to reflect the activities of the provider agency during its previous fiscal year. Cost reports may be required for other periods at the discretion of DHS.

(4) Failure to file an acceptable cost report. If a provider agency fails to file a cost report according to all applicable rules and instructions, DHS may withhold all provider payments until the provider agency submits an acceptable cost report.

(5) Accounting requirements. The provider agency must ensure that financial and statistical information submitted in cost reports is based upon the accrual method of accounting, except for governmental institutions operated on the cash method of accounting. The provider agency's treatment of any financial or statistical item must reflect the application of the generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants.

(6) Allocation methods. If allocation of cost is necessary, provider agencies must use reasonable methods of allocation. DHS adjusts allocated costs if DHS considers the allocation method to be unreasonable. The provider agency must retain workpapers supporting allocations.

(7) Cost report certification. Provider agencies must certify the accuracy of cost reports submitted to DHS in the format specified by DHS. Provider agencies may be liable for civil and/or criminal penalties in the case of misrepresented or falsified information.

(8) Cost report supplements. DHS may at times require additional financial and statistical information other than the information contained in the cost report.

(9) Review of cost reports. DHS staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk audit. DHS reviews all cost reports according to the criteria in §24.201 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports). If a provider agency fails to complete cost reports according to instructions or rules, DHS returns the cost reports to the provider agency for proper completion. DHS may require information other than that contained in the cost report to substantiate reported information.

(10) Field audits. DHS may perform field audits on all provider agencies that participate in the program. DHS determines the frequency and nature of audits, but ensures that they are not less than that required by federal regulations relating to the administration of the program.

(11) Notification of exclusions and adjustments. DHS notifies providers of exclusions and adjustments to reported expenses made during desk reviews and field audits of cost reports as specified in §24.401 of this title (relating to Notification).

(12) Access to records. Each provider agency or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider agency. If a provider agency does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold is placed on vendor payments until access to the records is allowed. If the provider agency continues to deny access to records, DHS may cancel the provider agency's contract.

(13) Recordkeeping requirements. Provider agencies must maintain records according to the requirements stated in §69.205 of this title (relating to Contractor's Records). Provider agencies must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(14) Failure to maintain adequate records. If a provider agency fails to maintain adequate records to support the financial and statistical information reported in cost reports, DHS allows 30 days for the provider agency to bring recordkeeping into compli-

ance. If a provider agency fails to correct deficiencies within 30 days from the date of notification of the deficiency, DHS may cancel the provider agency's contract for services.

(c) Reimbursement determination. DHS determines reimbursement in the following manner.

(1) Cost determination by cost area. DHS combines reported allowable costs into six cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Primary Home Care (PHC) field supervisors cost area. This includes PHC field supervisors' salaries, wages, training, travel expenses and other expenses. These costs are divided by total hours of PHC service, including total nonpriority and Priority 1 service hours, in order to calculate each provider's PHC field supervisor unit cost.

(B) Nonpriority attendants cost area. This includes PHC and Family Care (FC) attendants' salaries and wages, training, travel and other expenses. These costs are divided by total nonpriority hours of service, including PHC and FC, in order to calculate each provider's nonpriority attendant unit cost.

(C) Administration cost area. This includes administrative salaries and wages, and other administrative expenses. These costs are allocated between nonpriority services for PHC and FC and Priority 1 services for PHC and FC, with \$0.18 allocated per Priority 1 hour of service and the remaining administration costs allocated to nonpriority hours of service. The administration costs allocated to nonpriority services are divided by total nonpriority hours of service, combining PHC and FC nonpriority hours, in order to calculate each provider's nonpriority administration unit cost. The administration costs allocated to Priority 1 services are divided by total Priority 1 hours of service, combining PHC Priority 1 hours and FC Priority 1 hours, in order to calculate each provider's Priority 1 administration unit cost.

(D) Facility cost area. This includes building and equipment expenses, and operation and maintenance expenses. These costs are divided by total hours of service, including nonpriority services and Priority 1 services for both PHC and FC, in order to calculate each provider's facility unit cost.

(E) Priority 1 attendants cost area. This includes PHC and FC Priority 1 attendants' salaries and wages, training, travel and other expenses. These costs are divided by total Priority 1 hours of service, combining PHC and FC Priority 1 hours, in order to calculate each provider's Priority 1 attendant unit cost.

(F) Family Care (FC) field supervisors cost area. This includes FC field supervisors' salaries, wages, training, travel expenses and other expenses. For reimbursement effective on or after November 1, 1994, the field supervisor costs from the 1992 Family Care Cost Report are divided by the total hours of FC service reported on the 1992 Family Care Cost Report in order to calculate each provider's FC field supervisor unit cost.

(2) Exclusion of certain reported expenses and cost reports.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or

sections. Only allowable cost information is used to determine recommended reimbursement. DHS excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

- (i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or
- (ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(3) Projected costs. DHS projects allowable expenses per hour of service from each provider agency's reporting period to the next ensuing reimbursement period. DHS determines reasonable and appropriate economic adjusters as described in §24.301 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. DHS also adjusts reimbursements where new legislation, regulations, or economic factors affect costs as specified in §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(4) Projected cost arrays. To calculate reimbursement per hour of service, DHS rank-orders from low to high all provider agencies' projected allowable costs per hour of service in each cost area.

(5) Recommended reimbursement for each cost area component. The hours of service used to calculate each cost area component for each provider agency are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The cost component for each cost area is multiplied by 1.044 to calculate the recommended reimbursement for each cost area component.

(6) Total recommended reimbursement.

(A) For PHC nonpriority clients. DHS determines the recommended reimbursement by summing the recommended reimbursement described in paragraph (5) of this subsection for the cost area components described in paragraph (1)(A)-(D) of this subsection.

(B) For PHC Priority 1 clients. DHS determines the recommended reimbursement by adding the recommended reimbursement described in subparagraph (A) of this paragraph to the recommended reimbursement described in paragraph (5) of this subsection for the cost area component described in paragraph (1)(E) of this subsection.

(C) For Family Care nonpriority clients. For reimbursement effective May 1, 1995, DHS determines the recommended reimbursement by summing the recommended reimbursement described in paragraph (5) of this subsection for the cost area components described in paragraph (1) (B)-(D) and (F) of this subsection.



(D) For Family Care Priority 1 clients. DHS determines the recommended reimbursement by adding the recommended reimbursement described in subparagraph (C) of this paragraph to the recommended reimbursement described in paragraph (5) of this subsection for the cost area component described in paragraph (1)(E) of this subsection.

(7) Reimbursement determination authority. The Texas Board of Human Services recommends for approval to the Texas Health and Human Services Commission Primary Home Care reimbursements, based on the methodology in the state plan and the provisions of which are included in this chapter. The Texas Board of Human Services approves Family Care reimbursements, as these are non-Medicaid services.

(8) Reviews of cost report disallowances. A provider agency may request notification of the exclusions and adjustments to reported expenses made during either desk reviews or field audits according to §24.401 of this title (relating to Notification). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken by DHS under §24.601 of this title (relating to Reviews and Administrative Hearings).

(d) Factors affecting allowable costs. To be allowable under this program, costs must be:

(1) necessary and reasonable for the proper and efficient administration of the program to deliver services for which DHS has contracted;

(2) authorized or not prohibited under state or local laws or regulations;

(3) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations as to types or amounts of cost items;

(4) consistent with policies, regulations, and procedures that apply uniformly to both the Primary Home Care Program and other activities of the organization of which the provider agency is a part;

(5) treated consistently using generally accepted accounting principles appropriate to the circumstances;

(6) not allocable to or included as a cost of any other program in either the current or a prior period; and

(7) the net of all applicable credits.

(e) Definition of reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, DHS considers the following:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the business or the performance under the contract;

(2) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(3) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, or members, and the fulfillment of the purpose for which the business was organized.

(f) Unallowable costs. Unallowable costs are expenses incurred by a provider agency which are not directly or indirectly related to the provision of contracted services according to applicable laws, rules, and standards. A provider agency may expend funds on unallowable cost items, but those costs must not be included in the cost report and are not used in calculating a reimbursement

recommendation. The following list is a general guide to the various unallowable costs frequently encountered in cost reports submitted by provider agencies and is not intended to be inclusive of all possible unallowable costs:

(1) advertising expenses other than those for employee recruitment, yellow page listings no larger than one column width and one inch length, and advertising to meet statutory or regulatory requirements;

(2) allowances for bad debts or other similar accounts;

(3) business expenses not related to the provision of services for which DHS has contracted;

(4) contributions to political activities or contributions to charity;

(5) corporate headquarters expenses that are not directly involved in providing services or supplies used by the home health agency staff in normal operations relating to primary home care;

(6) depreciation expenses other than those based on straight-line depreciation;

(7) discounts for administrative reasons; courtesy, cash, trade, and quantity discounts; rebates; or other discounts granted;

(8) dues and membership fees to organizations whose primary emphasis is not related to the services for which DHS has contracted;

(9) entertainment expenses, except for entertainment which is reported as an employee relations cost;

(10) expenses incurred for services not related to the provision of services for which DHS has contracted;

(11) expenses for purchases of goods and services from revenues received from restricted or unrestricted gifts, donations, endowments, and trusts;

(12) expenses which are not the legal obligation of the provider agency;

(13) expenses of donated items, including depreciation and amortization of the value of the donations;

(14) fees and travel expenses for corporation or association board of directors; partnership or corporation filing fees;

(15) fines and other penalties for violation of statutes or ordinances; penalties for late payment of taxes, utilities, mortgages, loans, and other similar penalties;

(16) franchise fees;

(17) fund-raising and promotion expenses; public relations expenses;

(18) expenses for life insurance premiums where the beneficiary is the provider organization unless life insurance is a requirement of a loan agreement and the loan is related to client care;

(19) interest expense on loans for assets not related to the delivery of services for which DHS has contracted; interest expenses must be reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds;

(20) medical equipment and supplies (except those required by OSHA, those used for universal health and safety precautions, and those otherwise needed to meet program requirements);

(21) personal compensation not related to the delivery of services for which DHS has contracted;

(22) personal expenses not related to the delivery of services for which DHS has contracted;

(23) physicians' fees for completion of physician orders;

(24) expenses for the purchase of services, facilities, or supplies from related organizations or parties if the expenses exceed the lower of the cost to the related party or organization or the price of comparable services, facilities, or supplies purchased in an arm's length transaction;

(25) rental or lease expense on any item not related to the delivery of services for which DHS has contracted;

(26) tax expense for federal, state, or local income tax; any tax levied on assets not related to the delivery of services for which DHS has contracted; and

(27) transportation expenses for vehicles which are not generally suited to functions related to the provision of services for which DHS has contracted. Mileage expense may be included at a cost per mile not to exceed the current reimbursement rate set by the legislature for state employee travel. Mileage is allowable if there is adequate documentation of the mileage and if the expense was related to delivery of services for which DHS has contracted.

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 January 31, 1996.

TRD-9601328 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: February 21, 1996

Proposal publication date: August 1, 1995

For further information, please call: (512) 438-3765

## Chapter 50. Day Activity and Health Services

The Texas Department of Human Services (DHS) adopts the repeal of §50.6903 and new §50.6903 in its Day Activity and Health Services Chapter. New §50.6903 is adopted with changes to the proposed text as published in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5765). The repeal of §50.6903 is adopted without changes to the proposed text and will not be republished. DHS is withdrawing amendments to §§50.6901, 50.6902, and 50.6904-50.6906, and new §50.6907 in this issue of the *Texas Register*.

Also in this issue of the *Texas Register*, DHS is adopting related policies in Chapter 47 of this title and is withdrawing new Chapter 20 and related policies in Chapters 19, 24, 46, 47, 48, and 52 of this title.

Justification for the sections is to provide a single set of guidelines to facilitate financial accountability relating to service delivery and a better understanding of the reimbursement methodology due to inclusion of additional detail.

The sections will function by clarifying current reimbursement methodology practice, incorporate cost report procedural changes and remove the occupancy rate adjustment.

The department received no comments regarding adoption of the repeal and new section. DHS, however, is making the following changes. In §50.6903(a) DHS is deleting a reference to proposed rules which will not be adopted. DHS is changing §50.6903(b)(2)(B), and subsequently renumbering §50.6903(b)(2) (C) and revising §50.6903(b)(3), to eliminate procedures for treatment of cost reports with low utilization or operation for less than a full fiscal year until such time as comprehensive cost determination rules are proposed and adopted. In §50.6903(c) DHS is eliminating procedures for treatment of cost reports covering less than a full fiscal year until such time as comprehensive cost determination rules are proposed and adopted. DHS is changing §50.6903(c)(5)(F) to clarify that activity expenses are not limited to supplies.

## Reimbursement Methodology for Day Activity and Health Services

### • 40 TAC §50.6903

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

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 January 31, 1996.

TRD-9601330 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: February 21, 1996

Proposal publication date: August 1, 1995

For further information, please call: (512) 438-3765

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

### §50.6903. Reimbursement Determination.

(a) General requirements. Cost reports pertaining to providers' fiscal years ending in calendar year 1994 or 1995 will be governed by the information in this section.

(b) Exclusion of cost reports.

(1) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. The Texas Department of Human Services (DHS) excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(2) Individual cost reports may not be included in the database used for reimbursement determination if:

(A) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(B) an auditor determines that reported costs are not verifiable.

(3) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in paragraph (2)(A) of this subsection.

(c) Reimbursement determination. DHS determines reimbursement in the following manner.

(1) All contracted providers must submit a cost report unless the number of days between the date the first DHS client received services and the provider's fiscal year end is 30 days or

fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the DHS's Rate Analysis Department before the due date of the cost report.

(2) A provider agency may request notification of the exclusions and adjustments to reported expenses made during either desk reviews or on-site audits according to §24.401 of this title (relating to Notification). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken by DHS under §24.601 of this title (relating to Reviews and Administrative Hearings).

(3) DHS staff allocate payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Workers' Compensation Insurance (WCI), Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(4) DHS staff project all allowable expenses for the period from each provider's reporting period to the next ensuing reimbursement period. DHS staff determine reasonable and appropriate economic adjusters as described in §24.301 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. Depreciation and mortgage interest expenses are not projected. DHS staff also adjust reimbursement if new legislation, regulations, or economic factors affect costs as specified in §24.501 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs).

(5) DHS staff combine allowable reported costs into the following six cost areas.

(A) Salaries and benefits cost area includes the salaries, wages, payroll taxes, and benefits of Day Activity and Health Services personnel, excluding dietitians, food servers, and administrative staff.

(B) Transportation cost area includes the rental or lease of transportation equipment and operating costs. The driver's salary is not included in this cost area.

(C) Food and food service cost area includes the cost of meals, related supplies, dietitians, and food servers.

(D) Building, equipment, and capital cost area includes all building operation expenses.

(E) Utility cost area includes all water, electric, gas, and telephone expenses.

(F) Direct programmatic expenses cost area includes the costs of medical supplies, activity expenses, and administration, including administrative staff.

(6) Allowable costs are totaled by cost area and then divided by the total units of service for the reporting period to determine the cost per unit of service. DHS staff rank from low to high all provider agencies' projected costs per unit of service in each cost area. The median projected unit of service cost from each cost area is then determined. The median unit of service cost is multi-

plied by 1.044 and the resulting cost area amounts are then totaled to become the recommended reimbursement.

(d) Reimbursement determination authority. The Texas Board of Human Services establishes reimbursement using the Medicaid state plan and state rules, the provisions of which are included in this chapter. Reimbursement is set in an open meeting after Board consideration of financial and statistical information, and public testimony.

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 January 31, 1996.

TRD-9601331 Nancy Murphy  
Section Manager, Media and Policy Services  
Texas Department of Human Services

Effective date: February 21, 1996

Proposal publication date: August 1, 1995

For further information, please call: (512) 438-3765

◆ ◆ ◆  
**Part II. Texas Rehabilitation Commission**  
**Chapter 115. Memoranda of Understanding with**  
**Other State Agencies**

◆ ◆ ◆  
**• 40 TAC §115.4**

The Texas Rehabilitation Commission (TRC) adopts the repeal of §115.4, concerning coordinated services for multiproblem children and youth. The repeal is adopted without changes to the proposed text as published in the December 19, 1995, issue of the *Texas Register* (20 TexReg 10883).

The justification for the repeal is that §115.4 will replace the repealed Memorandum of Understanding with a new version entitled coordinated services for children and youths which will better ensure that children and youths with multi-agency needs receive effective coordinated services from the agencies involved.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Human Resources Code Annotated, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purpose of this chapter.

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

Issued in Austin, Texas, on January 29, 1996.

TRD-9601220 Charles W. Schiesser  
General Counsel  
Office of the General Counsel  
Texas Rehabilitation Commission

Effective date: February 19, 1996

Proposal publication date: December 19, 1995

For further information, please call: (512) 483-4051

◆ ◆ ◆  
The Texas Rehabilitation Commission (TRC) adopts by reference new §115.4, concerning coordinated services for children and youths. The new section is adopted without changes to the proposed text as published in the December 19, 1995, issue of the *Texas Register* (20 TexReg 10884).

The justification for the new section will be to ensure that children and youths with multi-agency needs receive effective coordinated services from multiple agencies.

No comments were received regarding adoption of the new section.

The new rule is adopted under Texas Human Resources Code Annotated, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purpose of this chapter.

This agency hereby certifies that the rule has been reviewed by legal counsel and found to be within the authority of the agency.

Issued in Austin, Texas, on January 29, 1996.

TRD-9601221 Charles W. Schiesser  
General Counsel  
Office of the General Counsel  
Texas Rehabilitation Commission

Effective date: February 19, 1996

Proposal publication date: December 19, 1995

For further information, please call: (512) 483-4051

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 11. Design

##### Private Toll Roads

###### • 43 TAC §§11.100-11.107

The Texas Department of Transportation adopts the repeal of §§11.100-11.107, concerning private toll roads, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8422).

Transportation Code, §§362.101-362.104, authorize the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

The sections are repealed to provide ease of access to all rules relating to toll projects. Repeal of these sections is necessary because the subject matter of these sections falls within Chapter 27, Toll Projects. The subject matter is reenacted in new §§27.30-27.37, concerning private toll roads, which are being contemporaneously adopted.

A comment deadline of November 17, 1995, was published and no comments were received.

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Transportation Code, §§362.101-362.104, which authorizes the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

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 January 31, 1996.

TRD-9601344 Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Effective date: February 21, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-8630

## Chapter 27. Toll Projects

### Subchapter B. Texas Turnpike Authority

#### • 43 TAC §§27.20-27.26

The Texas Department of Transportation proposes for permanent adoption new §§27.20-27.26, concerning the Texas Turnpike Authority, without changes to proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9268).

Transportation Code, Chapters 361 and 362, require that the Texas Transportation Commission authorize feasibility studies funded from the Texas Turnpike Authority Feasibility Study Fund and that the commission approve environmental reviews of authority projects, the location of authority projects, and any transfer of an authority project to another entity. Transportation Code, §362.051 prohibits the authority from initiating construction of a toll road, toll bridge, or turnpike without first obtaining commission approval if the project is to become part of the state highway system.

Senate Bill 1360 enacted by the 74th Texas Legislature, 1995, amended the Transportation Code by creating §362.0041. The legislation allows the commission, upon approval of the Governor, to transfer an existing segment of a state highway to the authority for operation as a toll road when such a transfer is the most feasible and economic means to accomplish necessary enlargements, improvements or extensions of the state highway system.

Section 27.20 explains that the purpose of the rules is to establish the criteria and procedures for the approval of certain phases of the development of turnpike projects constructed, maintained and operated by the authority; transfer existing free public highways to the authority to accomplish needed enlargements, improvements, or extensions; authorization of authority feasibility studies and approval of the authority's environmental reviews, project locations, projects, control of access, and transfer of projects.

Section 27.21 defines words and terms used in the new subchapter.

Section 27.22 requires that the authority submit a written request for authorization to conduct a project feasibility study, and provides that the commission shall consider the potential for environmental impact and the project's general compatibility with the state and regional transportation plans.

Section 27.23 requires that the authority submit a written request for approval of an environmental review, requires that the authority's environmental review shall be conducted in accordance with the authority's rules, and provides that the commission will approve the authority's environmental review if it complies with this section and applicable laws.

Section 27.24 authorizes the authority to designate the location, and establish, limit and control the points of ingress and egress from projects; provides that upon payment of all bonds and acceptance by the commission a turnpike project shall become part of the free state highway system; provides that certain governmental entities may not begin construction of a toll or turnpike project without commission approval if the project is to become part of the state highway system; requires that the authority submit a written request for project approval and provides a list of the required documentation; and provides the criteria for commission approval including effective integration into the state highway system, the department's ability to construct any connecting roads necessary for the project to generate sufficient revenue, and location of points of ingress and egress which ensure proper operation and maintenance.

Section 27.25 provides that turnpike projects may be transferred to certain entities if the authority, the commission, and the Governor approve the transfer as being in the best interest of the state and the local government, requires that the authority submit a written request to lease, sell or otherwise convey a project from the authority to another entity and that such request must be accompanied by a written commitment from the accepting entity to maintain the facility in a safe and efficient manner, and an evaluation of the impact of such action on regional mobility and project financial viability; and establishes the

criteria that the commission will consider before approving the lease, sale or conveyance of a project.

Section 27.26 provides that if the commission finds that the conversion of an existing public highway (or segment of highway) to a toll facility is the most feasible and economic means to accomplish necessary enlargements, improvements or extensions to the state highway system, that segment may, on approval of the Governor, be transferred to the authority; requires the commission to conduct a public hearing prior to transferring an existing highway to the authority; requires publication of public hearing notices; requires the department to prepare a public hearing summary; requires the authority to reimburse the commission for the cost of a transferred highway unless the commission finds that the transfer will result in a substantial net benefit to the state; establishes the criteria that the commission will consider before agreeing to transfer an existing highway; authorizes the commission to request approval from the Governor to execute such a transfer; requires the commission to remove a transferred segment from the designated state highway system; and requires the authority to assume responsibility and liability for maintenance and operation of the transferred facility.

On December 5, 1995, the department conducted a public hearing on the proposed new sections and no oral or written comments were received.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, Chapters 361 and 362 which provide that the commission must approve various aspects of turnpike project development and transfer of authority projects to other governmental entities; and may, upon approval of the Governor, transfer an existing public highway to the authority for conversion to a toll facility.

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 January 31, 1996.

TRD-9601343 Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Effective date: February 21, 1996

Proposal publication date: November 7, 1995

For further information, please call: (512) 463-8630

## Subchapter C. Private Toll Roads

### • 43 TAC §§27.30-27.37

The Texas Department of Transportation adopts new §§27.30-27.37, concerning private toll roads, with changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8435). (Sections 27.30-27.34 and §27.37 are adopted with changes and §27.35 and §27.36 are adopted without changes and will not be republished.)

Transportation Code, §§362.101-362.104, authorize the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

Adoption of new §§27.30-27.37 is necessary to replace the provisions of §§11.100-11.107, concerning private toll roads which are being contemporaneously repealed.

A comment deadline of November 17, 1995, was published and no comments were received.

Sections 27.30-27.34 and §27.37 have been changed to update references to the Transportation Code, Texas Administrative Code, and department organizational structure, to reflect the repeal of the national minimum speed limit, and to clarify that the professional engineer who certifies the design must be registered in Texas.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Transportation Code, §§362.101-362.104, which authorizes the Texas Transportation Commission to adopt procedural and substantive rules and regulations for approval of privately constructed and owned toll projects which connect to a road, bridge, or a highway included in the state highway system.

§27.30. *Purpose.* Transportation Code, Chapter 362, provides that a private entity or corporation may not construct any privately owned toll project which connects to a road, bridge, or highway included in the state highway system unless the project is approved by the Texas Transportation Commission and the Texas Department of Transportation. The sections under this subchapter prescribe the procedures and conditions by which a private entity or corporation may obtain the approval of the commission and the department.

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

Applicant—A private entity or corporation, authorized by law to construct a toll project, proposing to construct a project which will connect to a road, bridge, or highway included in the state highway system.

Commission—The Texas Transportation Commission.

Department—The Texas Department of Transportation.

Design manuals—The latest editions of the:

- (A) operations and procedures manual of the design division;
- (B) operation and planning manual of the design division;
- (C) hydraulic manual of the design division;
- (D) Texas Manual on Uniform Traffic Control Devices;
- (E) standard highway sign designs for Texas; and
- (F) traffic control standard sheets booklet of the traffic operations division.

Metropolitan planning organization—An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.

Project—A road or highway, bridge, ferry, or similar project other than those constructed, operated, maintained, and/or financed under Transportation Code, Chapter 361, or toll road authorities created by counties, and that is financed in whole or in part through the issuance of revenue bonds payable from toll revenues collected from users.

§27.32. *Preliminary Studies.*

(a) Studies. Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a feasibility study and a study of the social and environmental impact of the project.

(1) Feasibility study. An applicant shall conduct a feasibility study to determine the financial viability of the proposed project. The study shall include:

(A) the proposed method for financing the planning, design, construction, maintenance, and operation of the project; and

(B) traffic data and projections.

(2) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, 42 United States Code §§4321 et seq, and 23 United States Code §109(h). The study shall include the following components.

(A) Route and alignment. The applicant shall provide a design geometric layout certified by a professional engineer registered in Texas to be in accordance with design manuals that will:

(i) identify the selected route and alignment as well as the alternative routes and alignments which were considered;

(ii) provide evidence of the project's logical termini and independent utility;

(iii) provide the location of interchanges, mainlanes, grade separations, ramps, profiles and horizontal alignment, projected traffic volumes, and right-of-way limits for all routes and alignments considered; and

(iv) identify revisions or changes to state highway system facilities necessitated by the project.

(B) Environmental documentation.

(i) An applicant shall prepare an environmental assessment and/or an environmental impact statement in accordance with §2.43(d) and (e) of this title (relating to Highway Construction Projects-State Funds).

(ii) The form and content of an environmental assessment and environmental impact statement prepared by an applicant and any decision by an applicant that an environmental impact statement is not necessary must be approved by the department.

(b) Public involvement. An applicant shall provide for public involvement by:

(1) complying with §2.43(b) (1) and (2) of this title (relating to Highway Construction Projects-State Funds);

(2) holding one or more public hearings following the completion of the studies required by this section as may be necessary to ensure participation by each community affected by the project; and

(3) notifying the department in writing not less than ten days in advance of all public meetings and public hearings held under this section.

(c) Record. An applicant shall provide the department a summary of all public meetings and a summary and analysis of all public hearings held under this section. The summary and analysis for each public hearing shall include:

(1) the verbatim transcript of the hearing;

(2) a summary of comments received, and the response to and analysis of comments;

(3) any proposed changes in project location and design planned as a result of comments; and

(4) certification that the public hearings were held in accordance with §2.43(b)(2) of this title (relating to Highway Construction Projects-State Funds), and the Civil Rights Act of 1964.

(d) Revision to environmental document. Following the

public hearing, an applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process.

#### §27.33. Application.

(a) To secure approval of a project, an applicant must file an application with the department's executive director or his or her designee who shall serve as department liaison for the project. The application shall be in a form prescribed by the department, and must be accompanied by the following items:

(1) preliminary studies and the record and analysis of public involvement completed in accordance with §27.32 of this title (relating to Preliminary Studies);

(2) an analysis of project impact, which must include the following:

(A) integration with the state highway system and, if located within the jurisdiction of a metropolitan planning organization in an urbanized area, certification from that organization that the project is compatible with the existing regional transportation plan;

(B) economic impact based on a study assessing the potential impact of the project on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties; and

(C) impact on trade with Mexico, consisting of an assessment of the potential impact of the project on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the state and the Republic of Mexico, or in a county adjacent to such a county.

(b) If the department finds that the initial application meets the requirements of subsection (a) of this section, and that the preliminary design is in compliance with the design manuals, it shall notify the applicant of its findings and shall conduct one or more public hearings to receive public comment on the proposed project; and, subsequent to the public hearings, it shall submit the application together with its findings and recommendations to the commission for appropriate action.

#### §27.34. Project Requirements.

(a) Field changes. Any design field change during the course of construction shall be certified by a professional engineer registered in Texas as being in conformance with the department's design standards contained in the design manuals. A design field change relating to the connection of the proposed project with the state highway system must be approved by the department.

(b) As-built plans. Upon completion of construction of the project the applicant shall file with the department a set of the as-built plans incorporating any field changes during construction. These plans with field changes shall be signed, sealed, and dated by a professional engineer registered in Texas certifying that the project was constructed in accordance with the plans and specifications.

(c) State and federal law. An applicant shall comply with all federal and state laws and regulations applicable to the project and shall provide or obtain all permits, plans, and other documentation required by a federal, state, or local governmental entity.

(d) Speed limit. Upon completion of the project, posted speed limits for the various categories of vehicles shall be established in accordance with the procedures utilized by the department

for the state highway system, but in no case shall such limits exceed the maximum prima facie speed limits prescribed by state law for a public road having the same characteristics.

(e) Access. For proposed projects which will provide new access to a roadway requiring Federal Highway Administration (FHWA) approval of changes in access control, the applicant shall submit to the department all data necessary to request FHWA approval.

(f) Work on state right-of-way. All work required within the limits of state owned right-of-way shall be accomplished only pursuant to express written agreement with the department and at the sole expense of the applicant. This work will include all connections with, and necessary modifications to, state highways, and any necessary preliminary engineering and construction inspection. The department may, however, allow work to be accomplished by the applicant on appurtenant facilities.

*§27.37. Compliance.*

(a) If, subsequent to final commission approval and prior to completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement for commission approval of the project, the applicant may not connect the project to any portion of the state highway system.

(b) If, subsequent to final commission approval and completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement concerning the operation and maintenance of the project, the department shall sever the connection of the project to any portion of the state highway system and erect such barriers or barricades as may be appropriate for such purpose.

(c) Prior to denying or severing connection to a portion of the state highway system, the department will provide the applicant written notice of noncompliance stating the reasons for denial or severance. The applicant will be granted reasonable notice to bring the project into compliance.

(d) An applicant may appeal a decision under this section to deny or sever connection to a portion of the state highway system by filing a petition for an administrative hearing pursuant to §§1.21-1.61 of this title (relating to Contested Case 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 January 31, 1996.

TRD-9601342      Robert E. Shaddock  
                          General Counsel  
                          Texas Department of Transportation

Effective date: February 21, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-8630

◆                   ◆                   ◆  
Chapter 30. Aviation

Subchapter C. Aviation Facilities Development  
and Financial Assistance Rules

• 43 TAC §§30.203, 30.208-30.210

The Texas Department of Transportation adopts amendments to §30.203 and §§30.208-30.210, concerning aviation facilities development and financial assistance rules, without changes to the proposed text as published in the December 15, 1995, issue of the *Texas Register* (20 TexReg 10753).

Transportation Code, Chapter 21, provides for an aviation facilities development and financial assistance program. House Bill 2180, 74th Legislature, 1995, amended Texas Civil Statutes, Article 46c-6, now codified as Transportation Code, Chapter 21, to authorize a designated representative of the Texas Transportation Commission to conduct public hearings for comments on proposed financial assistance awards to governmental entities for airport development grants and to authorize the department to award a loan or grant to an aviation facility without holding a public hearing in the case of an emergency.

It is necessary to adopt amendments to §30.203 and §§30.208-30.210 to comply with House Bill 2180, 74th Legislature, 1995.

The amendment to §30.203, provides for a definition of emergency.

The amendments to §§30.208-30.210 provide a procedure for the department to award emergency financial assistance without holding a public hearing.

On January 5, 1996, the department conducted a public hearing on the proposed amendments and no oral or written comments were received.

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, Chapter 21, which provides an aviation facilities development and financial assistance program.

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.

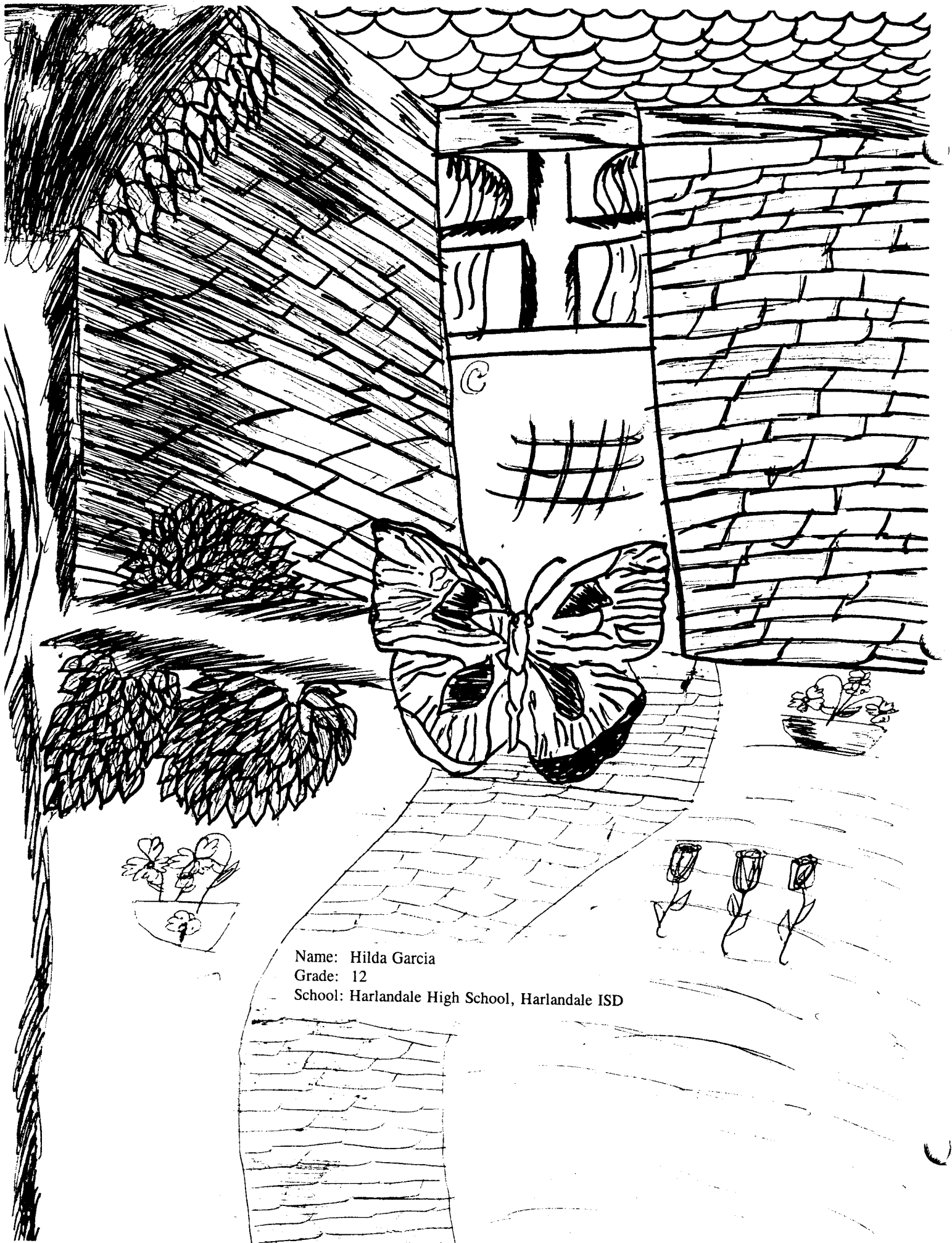
Issued in Austin, Texas, on January 31, 1996.

TRD-9601341      Robert E. Shaddock  
                          General Counsel  
                          Texas Department of Transportation

Effective date: February 21, 1996

Proposal publication date: December 15, 1995

For further information, please call: (512) 463-8630  
◆                   ◆                   ◆



Name: Hilda Garcia  
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# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

**Table 1**  
**Metropolitan Statistical Areas**

**MSA Name and Counties Included:**

<b>Abilene</b>	Taylor	<b>Laredo</b>	Webb
<b>Amarillo</b>	Potter	<b>Longview-Marshall</b>	Gregg
	Randall		Harrison
<b>Austin-San Marcos</b>	Bastrop	<b>Lubbock</b>	Upshur
	Caldwell	<b>McAllen-Edinburg-Mission</b>	Lubbock
	Hays	<b>Odessa-Midland</b>	Hidalgo
	Travis		Midland
	Williamson	<b>San Angelo</b>	Ector
<b>Beaumont-Port Arthur</b>	Hardin	<b>San Antonio</b>	Tom Green
	Jefferson		Bexar
	Orange		Comal
<b>Brownsville-Harlingen-</b>			Guadalupe
<b>San Benito</b>	Cameron	<b>Sherman-Denison</b>	Wilson
<b>Bryan-College Station</b>	Brazos	<b>Texarkana</b>	Grayson
<b>Corpus Christi</b>	Nueces		Bowie
	San Patricio	<b>Tyler</b>	Miller (Arkansas)
<b>Dallas</b>	Colin	<b>Victoria</b>	Smith
	Dallas	<b>Waco</b>	Victoria
	Denton	<b>Wichita Falls</b>	McLennan
	Ellis		Wichita
	Henderson		Archer
	Hunt		
	Kaufman		
	Rockwall		
<b>Fort Worth-Arlington</b>	Hood		
	Johnson		
	Parker		
	Tarrant		
<b>El Paso</b>	El Paso		
<b>Brazoria</b>	Brazoria		
<b>Galveston-Texas City</b>	Galveston		
<b>Houston</b>	Chambers		
	Fort Bend		
	Harris		
	Liberty		
	Montgomery		
	Waller		
<b>Killen-Temple</b>	Bell		
	Coryell		

Figure 1: 25 TAC <\*>241.2(q)(2)

BASE ADMINISTRATIVE PENALTIES

Table IA - Base Amounts

Type of User	Amount
All certificate holders	\$10,000
Other persons not certified	\$25,000

Figure 2: 25 TAC <\*>241.2(q)(2)

Table IB - Percentage of Base Amounts Based on Severity Level of Violation

Severity Level	Percent of Amount Listed in Table IA
V -----	5
IV -----	15
III -----	50
II -----	80
I -----	100

Figure 3: 25 TAC <\*>241.10(g)

NUMBER OF EMPLOYEES	MINIMUM NUMBER OF WATER CLOSETS
1 to 9 [15]	1
10 [16] to 24 [35]	2
25 [36] to 49 [55]	3
50 [56] to 74 [80]	4
75 [81] to 100 [110]	5
[111 to 150]	[6]
over 100 [150]	1 [additional fixture] for each additional 30 [40] employees

# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## State Office of Administrative Hearings

Thursday, March 7, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A prehearing conference will be held at the above date and time in SOAH Docket Number 473-95-1173-Application of Texas Utilities Electric Company for approval of demand-side management programs, renewable resources agreement, and requests regarding cost recovery mechanisms, and other relief (PUC Docket Number 13575).

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: February 1, 1996, 10:24 a.m.

TRD-9601415

Monday, April 29, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits will be held at the above date and time in SOAH Docket Number 473-95-1173-Application of Texas Utilities Electric Company for approval of demand-side management programs, renewable resources agreement, and requests regarding cost recovery mechanisms, and other relief (PUC Docket Number 13575).

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: February 1, 1996, 10:24 a.m.

TRD-9601416

Monday, May 6, 1996 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in the following docket: SOAH Docket Number 473-95-1820; PUC Docket Number 15100-Request of Golden Spread Electric Cooperative, Inc. for determinations required by §32K of the Public Utility Holding Company Act and for certification of contract.

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: February 1, 1996, 1:25 p.m.

TRD-9601461

## Texas Department of Agriculture

Monday, February 13, 1996, 1:30 p.m.

Room 300, Uvalde County Courthouse

Uvalde

Wintergarden Spinach Producers Board

AGENDA:

Call to order

Discussion and action: read and approve minutes of last meeting; expenses; set date and time for next meeting.

Report: on matching funds or donations from processors; Advisory Committee report.

Discussion: Identification of projects.

Adjourn

Contact: Don Laffere, P.O. Box 305, Batesville, Texas 78829, (210) 376-4385.

Filed: February 1, 1996, 12:25 p.m.

TRD-9601445

## The State Bar of Texas

Thursday, February 8, 1996, 9:00 a.m.

1300 Lamar, The Four Seasons Hotel, Whitney Room

Houston

Texas Commission for Lawyer Discipline

### AGENDA:

Public session: call to order/introductions/adoption of minutes/closed session to discuss: authorization of general counsel to make, accept or reject settlement offers or take appropriate action in pending disciplinary matters, assignment of special counsel to pending disciplinary cases, personnel matters/public session to discuss: appropriate action with respect to those matters discussed in closed session; outcome of recent disciplinary trials; attorneys fees assessed in disciplinary cases; matters unresolved in prior meetings; statistical reports; monitoring respondents' compliance with conditions included in disciplinary judgments; commission's compliance with State Bar Act, Orders of the Supreme Court, Texas Disciplinary Rules of Professional Conduct; budget and operations of the commission and the Office of General Counsel; district grievance committees; special counsel program; mediation of disciplinary matters/presentations by trial staff/discuss future meetings/discuss other matters as appropriately come before the commission/receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: January 31, 1996, 4:19 p.m.

TRD-9601400

## Texas Department of Commerce

Wednesday, February 21, 1996, 9:00 a.m.

1700 North Congress Avenue, First Floor, Room 119

Austin

Tourism Advisory Committee

### AGENDA:

The Texas Department of Commerce Tourism Advisory Committee will be holding its quarterly meeting at the Texas Department of Commerce office. The committee will adopt minutes of the previous committee meeting and will receive information on the Advertising Campaign new commercials, International Relations Firms and Media Relations activities of the Texas Department of Commerce Tourism Division. The committee will receive an overview of the recent trade shows from Tourism staff.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Hilda Flores at (512) 462-9191 at least two days before this meeting so that appropriate arrangements can be made. Please contact Adriana Jimenez Ray at (512) 936-0199 if you need assistance in having English translated to Spanish.

Contact: Renee Mauzy, P.O. Box 12728, Austin, Texas 78711-2728, (512) 936-0179.

Filed: February 1, 1996, 4:20 p.m.

TRD-9601471

## Comptroller of Public Accounts

Monday, February 12, 1996, 9:30 a.m.

Capitol Extension, Room E1.012

Austin

Board Meeting for the Prepaid Higher Education Tuition Board

### AGENDA:

I. Call to order

II. Roll call

III. Approval of minutes of December 18, 1995 board meeting

IV. Program update

V. Discussion and vote regarding proposed amendment of program rules (Title 34, Part I, Chapter 7)

VI. Discussion and vote to approve contract for program investment consultant

VII. Discussion of board's authority to award scholarships and create a direct-support organization to administer certain scholarship contributions

VIII. Public comment

IX. Set next board meeting

X. Adjourn

Contact: Wardaleen Belvin, 111 East 17th Street, Room 131, Austin, Texas 78774, (512) 463-4384.

Filed: February 4, 1996, 2:20 p.m.

TRD-9601472

## Texas State Board of Examiners of Professional Counselors

Friday, February 9, 1996, 8:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Complaints Committee

### AGENDA:

The committee will discuss and possibly act on: petition for rule change submitted by Texas Counseling Association; and request for Attorney General's Opinion relating to the Complaints Committee meeting in closed meetings.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: January 31, 1996, 2:22 p.m.

TRD-9601384

Friday, February 9, 1996, 8:30 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Testing and Continuing Education Committee

### AGENDA:

The committee will discuss and possibly act on: ratification of action taken at the November 18, 1995 board meeting concerning correspondence from Sandi Black and Sister Karen Kudlac relating to the examination process; ratification of action taken at the November 18, 1995 board meeting concerning contract with the Ohio Counselor and Social Worker Board; use of an audit system for reporting continuing education; legal opinion relating to art therapists and the Texas licensed professional counselor examination; Ad Hoc Test Committee's comparison study between the national art therapy exam and the Texas licensing exam; and current testing matters (statistics, concerns, etc.).

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:22 p.m.

TRD-9601385

**Friday, February 9, 1996, 9:30 a.m.**

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Rules Committee

**AGENDA:**

The committee will discuss and possibly act on: ratification of action taken at the November 18, 1995 board meeting concerning petition for rule change submitted by Ben Boaz; petition for rule changes submitted by Texas Counseling Association; amendments to 22 Texas Administrative Code (TAC), Chapter 681; and proposal of amendments 22 TAC, Chapter 681.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:22 p.m.

TRD-9601386

**Friday, February 9, 1996, 11:00 a.m.**

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Public and Professional Relations Committee

**AGENDA:**

The committee will discuss and possibly act on the May 1996 newsletter (review of proposed articles; discussion of additional topics; and discussion of deadlines).

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:23 p.m.

TRD-9601387

**Friday, February 9, 1996, 12:30 p.m.**

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Applications Committee

**AGENDA:**

The committee will discuss and possibly act on: applications or requests of the following persons (Katherine Allen; Rabia Clark; Betty Brigman Collins; David Griffin; and others); and drafts of amended application forms.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:23 p.m.

TRD-9601388

**Friday, February 9, 1996, 2:00 p.m.**

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Administration and Finance Committee

**AGENDA:**

The committee will discuss and possibly act on: the financial report through January 31, 1996; update concerning fund created for fees guaranteed by the contract with the Ohio Counselor and Social Worker Board; recommendation(s) for travel; records security and recovery of records in the event of a disaster; report on status of personnel; and expenditures and reimbursements for travel.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:23 p.m.

TRD-9601389

**Saturday, February 10, 1996, 9:00 a.m.**

Room N-218, The Exchange Building, 8407 Wall Street

Austin

Public and Professional Relations Committee

**AGENDA:**

The board will discuss and possibly act on: approval of the minutes from the November 18, 1995 meeting; persons who wish to appear before the board; proposal for decision relating to R.H.O.; board order relating to R.H.O.; ratification of action taken at the November 18, 1995 board meeting concerning proposal for decision relating to F.L.M.; ratification of action taken at the November 18, 1995 board meeting concerning board order relating to F.L.M.; applications committee report (applications or requests of the following persons (Katherine Allen; Rabia Clark; Betty Brigman Collins; David Griffin; and others); and drafts of amended application forms); complaints committee report (report from December 29, 1995 committee meeting; petition for rule change submitted by Texas Counseling Association; and request for an Attorney General's Opinion relating to the Complaints Committee meeting in closed meetings); testing and continuing education committee (ratification of action taken at the November 18, 1995 meeting concerning correspondence from Sandi Black and Sister Karen Kudlac relating to the examination process; ratification of action taken at the November 18, 1995 meeting concerning contract with the Ohio Counselor and Social Worker Board; use of an audit system for reporting continuing education; legal opinion relating to art therapists and the Texas licensed professional counselor examination; Ad Hoc Testing Committee's comparison study between the national art therapy exam and the Texas licensing exam; and report concerning testing matters (statistics, concerns, etc.)); rules committee report (ratification of action taken at the November 18, 1995 meeting concerning petition

for rule change submitted by Ben Boaz; petition for rule changes submitted by Texas Counseling Association; amendments to 22 Texas Administrative Code (TAC), Chapter 681; and proposal of amendments to 22 TAC, Chapter 681); administration and finance committee (financial report through January 31, 1996; update concerning fund created for fees generated by the contract with the Ohio Counselor and Social Worker Board; recommendation(s) for travel; records security and recovery of records in the event of a disaster; report on status of personnel; and expenditures and reimbursements for travel); and public professional relations committee report (topics for the May 1996 newsletter (review of proposed articles; additional topics; and deadlines)); and setting future meeting date(s).

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:22 p.m.

TRD-9601383

**Saturday, February 10, 1996, 11:00 a.m.**

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Complaints Committee

**AGENDA:**

The committee will discuss and possibly act on the following pending complaints: 93-C002; 93-C008; 93-C201; 93-C034; 94-C008; 94-C009; 94-C034; 94-C042; 94-C058; 94-C074; 94-C079; 94-C116; 94-C118; 94-C128; 95-C012; 95-C016; 95-C017; 95-C018; 95-C020; 95-C021; 95-C022; 95-C023; 95-C031; 95-C034; 95-C040; 95-C046; 95-C049; 95-C050; 95-C055; 95-C058; 95-C062; 95-C065; 95-C069; 95-C070; 95-C075; 95-C076; 95-C080; 95-C082; 95-C083; 95-C084; 95-C087; 95-C090; 95-C092; 95-C095; 95-C098; 95-C100; 96-C009; 96-C012; 96-C013; 96-C014; 96-C015; 96-C016; 96-C017; 96-C018; 96-C019; 96-C020; 96-C024; 96-C025; 96-C026; 96-C027; 96-C028; 96-C029; 96-C030; 96-C031; 96-C032; 96-C033; 96-C034; 96-C035; 96-C036; 96-C037; 96-C038; 96-C039; 96-C040; 96-C041; and 96-C042.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** January 31, 1996, 2:23 p.m.

TRD-9601390

**Saturday, February 10, 1996, 11:00 a.m.**

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Revised Agenda

Complaints Committee

**AGENDA:**

The committee will discuss and possibly act on the following pending complaints: 96-C021; 96-C022; and 96-C023.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** February 1, 1996, 11:32 a.m.

TRD-9601422

## State Employee Charitable Campaign

**Wednesday, February 8, 1996, 1:00 p.m.**

2000 East Martin Luther King Jr. Boulevard

Austin

State Policy Committee

**AGENDA:**

1. Update of SPC and SAC 1996-1997 appointments
2. Review of 1995 state employee charitable campaign evaluation, campaign results and budget results
3. Selection of 1996 state campaign manager
4. 1996 campaign plan and recommendations
5. 1996 SECC timeline
6. Proposed 1996 comptroller's rules changes and potential 1997 legislative changes
7. 1996 state campaign manager budget

**Contact:** Mary Ellen Burns, 505 East Huntland Drive, Suite 455, Austin, Texas 78752, (512) 450-0840 or Fax: (512) 450-0108.

**Filed:** February 1, 1996, 1:14 p.m.

TRD-9601458

## Texas Ethics Commission

**Friday, February 9, 1996, 9:30 a.m.**

1101 Camino La Costa, Room 235

Austin

**AGENDA:**

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the January 12, 1996, meeting; briefing, discussion and possible action to waive certain fines assessed for late filing of a report; discussion and possible action in response to the following Advisory Opinion Requests Numbers 335, 337, and 338; adjourn.

**Contact:** Tom Harrison, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-5800.

**Filed:** February 1, 1996, 10:24 a.m.

TRD-9601414

## Office of the Governor

**Thursday, February 8, 1996, at 4:00 p.m.**

Room E1.004, Extension Auditorium, 1100 Congress Avenue, State Capitol Extension

Austin

Transition Oversight Committee on Workforce Development

**AGENDA:**

- I. Call to order
- II. Agency report
  - A. Progress report from Texas Workforce Commission



III. Public testimony

IV. Adjourn

Contact: Tom McCarty, P.O. Box 12428, Austin, Texas 78711, (512) 463-1897.

Filed: January 31, 1996, 2:31 p.m.

TRD-9601391

◆ ◆ ◆  
**Texas Higher Education Coordinating Board**

Wednesday, February 14, 1996, 10:00 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Family Practice Residency Advisory Committee

AGENDA:

Report on developing a relationship with a Federally Qualified Migrant Health Center; report on the implementation of Family Practice Residency Program Pilot Projects as follows: Central Texas Medical Foundation FPRP, McLennan County Medical Education Foundation FPRP, Baylor College of Medicine FPRP, Texas Tech University Health Science Center-El Paso FPRP, and Development Center; and report on the Statewide Preceptorship Program.

Contact: Stacey Silverman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6206.

Filed: February 5, 1996, 10:04 a.m.

TRD-9601526

◆ ◆ ◆  
**Texas Department of Insurance**

Tuesday, February 20, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1722.E

Request for reconsideration by Bankers Protective Life Insurance Company from a decision of the staff of the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: February 5, 1996, 9:31 a.m.

TRD-9601489

Tuesday, February 20, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0197.c

To consider whether disciplinary action should be taken against Craig L. Wargo, San Antonio, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: February 5, 1996, 9:32 a.m.

TRD-9601490

Wednesday, February 21, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1247.c

To consider whether disciplinary action should be taken against Judith T. Hunter, Lubbock, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and Group II Insurance Agent's License issued by the Texas Department of Insurance and Richard A. Hunter, Lubbock, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance (continued from January 11, 1996).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: February 5, 1996, 9:32 a.m.

TRD-9601491

◆ ◆ ◆  
**Texas Department of Licensing and Regulation**

Thursday, February 15, 1996, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against the respondent, John Gerald Redmon, for failing to provide proper installation, service and mechanical integrity in violation of the Texas Revised Statutes Annotated, Article 8861 (the Act), §5(a), pursuant to the Act and Article 9100; the Texas Government Code, Chapter 2001 (APA); and 16 Texas Administrative Code, Chapter 75.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: February 1, 1996, 10:35 a.m.

TRD-9601418

◆ ◆ ◆  
**Texas Mental Health and Mental Retardation Board**

Wednesday, February 14, 1996, 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

Planning and Policy Development Committee

AGENDA:

1. Citizens comments
2. State school closure update
3. Update regarding state facilities governing body activities
4. Legislative update

5. Briefing on the Texas performance review recommendations
6. Update and presentation of preliminary report from the Ad Hoc Committee on Mental Retardation and Managed Care
7. Update on the conversions of community services divisions of state facilities
8. Update on House Bill 2377 authority/provider pilots
9. Consideration of approval of the appointment of new members to the Treatment Methods Advisory Committee

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: February 5, 1996, 9:00 a.m.

TRD-9601483

**Wednesday, February 14, 1996, 10:15 a.m.**

909 West 45th Street (Auditorium)

Austin

Audit and Financial Oversight Committee

AGENDA:

1. Citizens comments
2. Financial status report
3. Audit activity update
4. Update on state auditor's review of management controls at TDMHMR

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: February 5, 1996, 9:01 a.m.

TRD-9601484

**Wednesday, February 14, 1996, 11:00 a.m.**

909 West 45th Street (Auditorium)

Austin

Business and Asset Management Committee

AGENDA:

1. Citizens comments
2. Presentation on revenue enhancement
3. Consideration of approval of fiscal year 1996 operating budget adjustments
4. Consideration of items related to Central Park
5. Update on real property transactions previously approved by the board; lease of the Vernon State Hospital South Campus to the Texas Youth Commission; conveyance of 200 acres at Travis State School to Vision Village, Inc.; sale of a one acre parcel at Big Spring State Hospital; release of deed conditions on a 70.67 acre parcel in Big Spring, Texas; conveyance of approximately nine acres at Fort Worth State School to the Texas General Services Commission; sale of former TRIMS Building to UT-Houston Health Science Center; lease of the Triangle Property in Austin, Texas; lease of surplus real property at the Waco Center for Youth; implementation of the Asset Management Policy.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: February 5, 1996, 9:00 a.m.

TRD-9601482

**Wednesday, February 14, 1996, 1:00 p.m.**

909 West 45th Street (Auditorium)

Austin

AGENDA:

- I. Call to order; roll call
- II. Citizens' comments
- III. Approval of minutes of January 11, 1996, meeting
- IV. Issues to be considered
  1. Chairman's report: announcement of the appointment of new members to the Treatment Methods Advisory Committee; special appreciation presentations
  2. Commissioner's report: presentation on Dallas County MHMR Center authority activities; presentation of Human Resources Fact Book; Medical Director's report
  3. Consideration of approval of fiscal year 1996 operating budget adjustments
  4. Consideration of items related to Central Park
  5. Litigation: RAJ v. Gilbert; Private Provider Association of Texas v. Health and Human Services Commission, et al; potential and other litigation

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: February 5, 1996, 9:01 a.m.

TRD-9601485

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## Texas Natural Resource Conservation Commission

**Thursday, February 15, 1996, 9:30 a.m.**

6300 Ocean Drive, Texas A&M University Corpus Christi, Conrad Blucher Institute

Corpus Christi

Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

- I. Call to order/introduction/minutes
- II. Program update
- III. Fiscal year 1997 work plan development
- IV. Implementation funding
- V. Report on action planning workshop and all-conference workshop
- VI. Approval of characterization reports
- VII. Additional items/adjour

Contact: Richard Volk, Campus Box 290, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: February 4, 1996, 2:21 p.m.

TRD-9601477

Wednesday, March 13, 1996, 9:30 a.m.

Room 201S of Building E, 12118 North IH-35, TNRCC Park 35 Office Complex

Austin

Commission Agenda

AGENDA:

For a commission agenda hearing on an application for renewal of the authority to adopt and impose a standby fee on undeveloped property in Aransas County Municipal Utility District Number 1 (the "District"). The application has been filed and the hearing will be held under the authority of §50.056 of the Texas Water Code, 30 Texas Administrative Code, §§293.141-293.152, and under the procedural rules of the commission. The purpose of standby fees is to distribute a fair portion of the cost burden for operation and maintenance of the district facilities and to finance capital costs of the district facilities to owners of property who have not constructed improvements but have water and/or wastewater facilities or capacity available. Any revenue collected from the standby fees shall be used to pay operation and maintenance expenses. The amount of the standby fee requested is \$156 per year per equivalent single-family connection (ESFC) for calendar years 1996-1998 on residential lots, each 70 feet of frontage for acreage restricted for residential use, and each proposed town home unit within the district that has available water and/or wastewater facilities constructed and financed by the district.

Contact: Water Utilities District Administration, MC-152, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: January 31, 1996, 4:20 p.m.

TRD-9601401

### Polygraph Examiners Board

Friday, February 9, 1996, 9:00 a.m.

DPS Aircraft Conference Room, 6100 Guadalupe, CLE Building Austin

AGENDA:

February 9, 1996, 9:00 a.m.—Open meeting; discussion and possible action on board fiscal matters; establish April 1996 meeting location and dates; discussion and possible action on employee office procedures; close meeting for executive session to discuss personnel matters; open meeting for possible hiring of executive officer

Contact: Bob H. Musser, 3033 Fannin, Suite 205, Houston, Texas 77004, (713) 521-0500.

Filed: January 31, 1996, 3:07 p.m.

TRD-9601392

### Railroad Commission of Texas

Tuesday, February 13, 1996, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: February 5, 1996, 8:48 a.m.

TRD-9601481

Friday, February 23, 1996, 2:00 p.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

The commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's office.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711, (512) 463-6837.

Filed: February 5, 1996, 8:48 a.m.

TRD-9601480

### University of Houston System

Wednesday, February 7, 1996, 2:00 p.m.

1600 Smith, Suite 3400, Conference Room One, UH System Offices Houston

Board of Regents, Facilities Planning/Building Committee

AGENDA:

To discuss: major art selection for the University of Houston, Athletic/Alumni Facility-UH System; major art selection for the University of Houston-Downtown, Student Life Building-UH System.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: February 1, 1996, 12:12 p.m.

TRD-9601440

### Texas Workers' Compensation Commission

Friday, February 9, 1996, 9:30 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Medical Advisory Committee

AGENDA:

1. Call to order
2. Review and possible approval of the September 15, 1995 and November 10, 1995 minutes

3. Review and discussion of the action items from the November 10, 1995 meeting
4. Update on rules presented to the commission
5. Review, discussion and possible approval of the Acute Care Inpatient Hospital Fee Guideline
6. Discussion on medical policies
7. Durable medical equipment fees
8. Establish draft agenda
9. Establish next meeting date
10. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: February 5, 1996, 9:12 a.m.

TRD-9601486

## Regional Meetings

### Meetings Filed January 31, 1996

The Austin-Travis County Mental Health and Mental Retardation Center Public Relations Committee met at 1430 Collier Street, Board Room, Austin, February 8, 1996, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 7804, (512) 447-4141. TRD-9601406.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging met at 1706 East 29th Street, Bryan, February 6, 1996, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9601397.

The Dallas Central Appraisal District Board of Directors' Regular Meeting met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, February 7, 1996, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9601382.

The Nortex Regional Planning Commission Executive Committee will meet at Galaxy Center, #2 North, Suite 200, 4309 Jacksboro Highway, Wichita Falls, February 15, 1996, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281. TRD-9601404.

The Parmer County Appraisal District Board of Directors 305 Third Street, Bovina, February 8, 1996, at 7:00 p.m. Information may be obtained from Ronald E. Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9601405.

The Scurry County Appraisal District Board of Directors met at 2612 College Avenue, Snyder, February 6, 1996, at 8:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9601399.

The Shackelford Water Supply Corporation Director's met at the Fort Griffin Restaurant, Albany, February 7, 1996, at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (915) 762-3532. TRD-9601398.

The Sulphur-Cypress Soil and Water Conservation District #419 met at 1809 West Ferguson, Suite D, Mt. Pleasant, February 8, 1996, at 8:30 a. m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9601379.

### Meetings Filed February 1, 1996

The Atascosa County District Appraisal Review Board met at Fourth and Avenue J, Poteet, February 8, 1996, at 9:00 a.m. Information may be obtained from Bruce H. Martin, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9601470.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, February 7, 1996, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9601468.

The East Council of Governments (Rescheduled from February 1, 1996) Executive Committee will meet at 3800 Stone Road, Kilgore, February 9, 1996, at 1:00 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9601469.

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, February 8, 1996, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9601459.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, February 8, 1996, Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9601467.

The Northeast Texas Rural Rail Transportation District Board met at 100 Jefferson Street, Conference Room, Sulphur Springs, Hopkins County, February 5, 1996, at 3:00 p.m. Information may be obtained from Sue Ann Harting, P.O. Box 306, Commerce, Texas 75428-0306, (903) 450-0140. TRD-9601408.

The San Patricio County Appraisal District Board of Directors met at 1146 East Market, Sinton, February 8, 1996 at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 346-5402. TRD-9601413.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, February 13, 1996, at 10:00 a.m. Information may be obtained from Tyler CAD, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9601409.

The Texas Water Conservation Association Risk Management Fund Board of Trustee met at Worthington Hotel, Trinity Central Ballroom, 200 Main Street, Fort Worth, February 7, 1996, 8:30 a.m. Information may be obtained from Leroy Goodson, 221 East Ninth Street, Suite 206, Austin, Texas 78701, (512) 472-7216. TRD-9601417.

### Meetings Filed February 4, 1996

The Hickory Underground Water Conservation District Number One Board of Advisors met at 2005 South Bridge Street, Brady, February 8, 1996, at 7:00 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9601474.

The Hickory Underground Water Conservation District Number One Board of Advisors will meet at McCulloch County Courthouse, Brady, February 9, 1996, at 10:00 a.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9601475.

The Kempner Water Supply Corporation Board of Directors met at Highway 190, Kempner, February 8, 1996, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9601473.

The Riceland Regional Mental Health Authority Finance Committee met at 4910 Airport, Rosenberg, February 7, 1996, at 11:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box

869, Wharton, Texas 77488, (409) 532-3098. TRD-9601476.

The West Central Texas Council of Governments/Career Stop Career Stop Advisory Committee met at 1025 East North Street, Abilene, February 7, 1996, at 10:00 a.m. Information may be obtained from Cheryl Halliburton, 809 North Judge Ely Boulevard, Abilene, Texas 79601, (915) 672-8544. TRD-9601478.

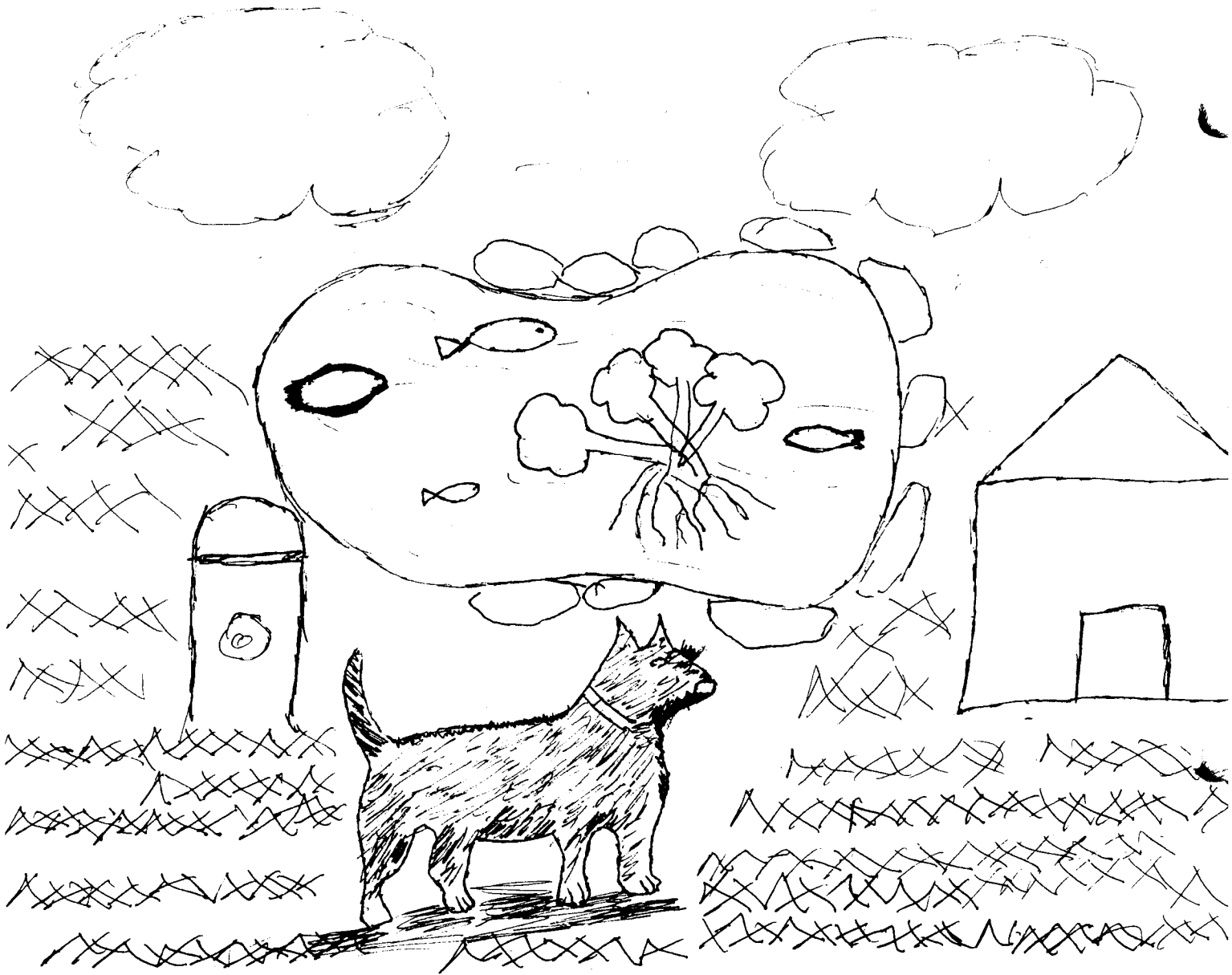


### Meetings Filed February 5, 1996

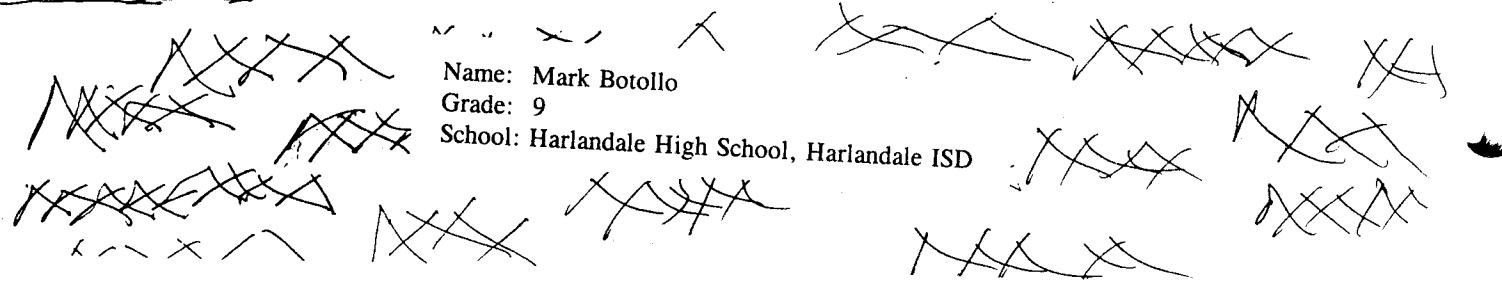
The Barton Springs/Edwards Aquifer Conservation District Board of Director-Work Session met at 1124A Regal Row, Austin, February 8, 1996, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or Fax: (512) 282-7016. TRD-9601479.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, February 13, 1996, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9601487.





Name: Mark Botollo  
Grade: 9  
School: Harlandale High School, Harlandale 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 Education Agency

### Correction of Error

The Texas Education Agency proposed repeals to §61.11 and §61.21. The rules appeared in the February 2, 1996, issue of the *Texas Register* (21 TexReg 730).

An error as submitted appeared in the header information. Subchapter A is erroneously titled "Operations." The correct title of Subchapter A of Chapter 61 is "Board of Trustees Relationship."

The Texas Education Agency proposed new §105.1001, concerning optional extended year programs. The rule appeared in the February 2, 1996, issue of the *Texas Register* (21 TexReg 741).

An error as submitted appeared in the second sentence of §105.1001(j), the word "standards" in the phrase "The standards must provide teachers..." should read "training."

The Texas Education Agency adopted new §§176.1-176.21. The rules appeared in the January 23, 1996, issue of the *Texas Register* (21 TexReg 590).

An error as submitted appeared in §176.2, relating to definitions. In the definition of the term "division director," the phrase "...commissioner of education of education..." should read "...commissioner of education..."

## Texas Education Agency

### Notice of Availability of Elementary and Secondary Education Act (ESEA), Title 1, Chapter 2, Annual Evaluation Report for School Year 1993-1994

The Elementary and Secondary Education Act (ESEA), Title 1, Chapter 2, provides federal financial assistance to state and local educational agencies to improve elementary and secondary education through a variety of targeted assistance programs and services for children attending both public and private nonprofit schools.

The ESEA, Chapter 2, Annual Evaluation Report for 1993-1994 is now available to the public through each regional education service center (ESC). Colleges and universities in Texas were also requested to place a copy of the report in their campus libraries. Parents, teachers, school administrators, private nonprofit school personnel, local community organizations, businesses, and other interested persons or agencies may review the copy on file

or may copy the document at personal expense at any ESC or college/university library where the document is on file.

Interested persons or agencies may also request a copy at no charge from the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

Additional information about the ESEA, Chapter 2, program may be obtained from Earin Martin, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269.

Issued in Austin, Texas, on February 5, 1996.

TRD-9601488

Cris Cloud  
Associate Commissioner for Policy Planning  
and Research  
Texas Education Agency

Filed: February 5, 1996

## Texas Environmental Awareness Network

### Notice of Monthly Meeting

The Texas Environmental Awareness Network (TEAN) will meet Tuesday, February 13, 1996, 8:30 a.m. at its usual location, the Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

Agenda:

1. Approval of Minutes of meeting of January 9, 1996.
2. Report on survey of steering committee members.
3. Report on Goal number 3 of TEAN.
4. Report on Environmental Education meeting at Broaddus.
5. Report on TEAN Guide reissue. Discussion of expanding listings and discussion of use of WWW site.
6. Report on Eye on Earth presentation to Science Coordinators.
7. Eye on Earth. Production for February 14 and Production for March 13.
8. Time permitting, a look at one or more educational curricula produced by Tean members. For information about the meeting or to place an item on the agenda, contact John Hamilton, TEAN CO-Chair, by mail at 1700 Congress Avenue, Austin, Texas 78701, or by phone at (512) 463-5310.

Issued in Austin, Texas, on February 1, 1996.

TRD-9601407

Sigrd Clift  
Interim Secretary  
Texas Environmental Awareness Network

Filed: February 1, 1996

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**Texas Department of Health**

**Correction of Error**

The Texas State Board of Examiners of Perfusionists adopted amendments to §§761.2, 761.7, 761.9, 761.10, 761.13, and 761.20. The rules appeared in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9850).

Due to an error in the department's submission and a publishing error, §761.20(h) incorrectly cross-referenced a cite. Subsection (h) should read as follows: "(h) The individual must pay a reinstatement fee set out at §761.2(s)(2)(F) of this title (relating to The Board's Operation) prior to issuance of the license."

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**Texas Department of Insurance**

**Correction of Error**

The Texas Department of Insurance proposed an amendment to §5.4201. The rule appeared in the January 16, 1996, issue of the *Texas Register* (21 TexReg 426).

In §5.4201, first paragraph, line 22, should read "...The proposed endorsement is necessary to provide a means to allow a TCPIA policyholder to select a large deductible of 1.5%, 2.0%, 2.5%, 3.0%, 4.0%, or 5.0%..."

The Texas Department of Insurance proposed an amendment to §5.4501. The rule appeared in the January 16, 1996, issue of the *Texas Register* (21 TexReg 427).

On page 428, first column, line 49, the percentages should read as follows: 1.5%, 2.0%, 2.5%, 3.0%, 4.0%, or 5.0%.

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**Notice**

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request outside the promulgated flexibility band filed by American Bankers Insurance Company of Florida pursuant to Texas Insurance Code, Article 5.101, §3(g). They are proposing rates ranging from -30% to -91.8% for Antique Auto and Other Collectibles for private passenger automobile.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas on February 5, 1996.

TRD-9601519

Alicia M. Fachtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: February 5, 1996

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The Commissioner of Insurance, or his designee, will consider approval of a request filed by Great American Insurance Group proposing to use a rating manual relative to classifications and territories of risks different than that promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code, Article 5.101, §3(l). They are proposing to implement a Drug-Free Workplace Program 5.0% premium credit for commercial automobile.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas on February 5, 1996.

TRD-9601518

Alicia M. Fachtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: February 5, 1996

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**Third Party Administrator Applications**

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Brazos Bend Physicians Association, P.A., a domestic third party administrator. The home office is Richmond, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas on February 5, 1996.

TRD-9601520

Alicia M. Fachtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: February 5, 1996

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**Texas Natural Resource Conservation  
Commission**

**Applications for Waste Disposal Permits**

Notices of Applications for waste disposal permits issued during the period of January 31, 1996-February 1, 1996

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more



persons file written protests and/or a request for a hearing within 30 days after publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

**ROYAL INDEPENDENT SCHOOL DISTRICT**, The wastewater treatment facilities are immediately southeast of the intersection of Farm-to-Market Road 359 and North Street in the City of Pattison in Waller County, Texas, renewal, 10873-02.

**BISSONNET MUNICIPAL UTILITY DISTRICT**, The wastewater treatment facilities are at 13026 Bissonnet on the northeast corner of the intersection of Synott (Farm-to-Market Road 1876) and Old Richmond Road (Bissonnet) in Harris County, Texas, renewal, 11461-01.

**CONTINENTAL CARBON COMPANY**, The plant site is approximately 2.3 miles north-northwest of the intersection of FM Roads 119, 721 and 1284 and 8.5 miles northeast of the City of Dumas, Moore County, Texas, renewal, 02882.

**CORINTHIAN POINT MUNICIPAL UTILITY DISTRICT NUMBER 2**, The Corinthian Point MUD Number 2 Wastewater Treatment Plant is approximately six miles northwest of the intersection of Farm-to-Market Road 1097 and Interstate Highway 45 and adjacent to the east side of Lake Conroe approximately 9000 feet north of Farm-to-Market Road 1097 in Montgomery County, Texas, renewal, 11285-01.

**VILLAGE OF JAMAICA BEACH**, The wastewater treatment plant is approximately 600 feet east of Bob Smith Drive on Marina Drive within the boundaries of the Village of Jamaica Beach in Galveston County, Texas, renewal, 11033-01.

**CITY OF LAMPASAS**, The Sulphur Creek Wastewater Treatment Plant is approximately one mile northeast of the

intersection of U.S. Highway 190 and U. S. Highway 183 on the south side of Sulphur Creek near the east end of Creek Street in the City of Lampasas in Lampasas County, Texas, renewal, 10205-01.

**CITY OF TAFT**, The wastewater treatment plant is approximately 1.4 miles east-northeast of the intersection of Farm-to-Market Road 631 and Rincon Road, northeast of the City of Taft in San Patricio County, Texas, renewal, 10705-01.

**TEXAS ICE STADIUM AND MALCOLM D. BAILEY** doing business as **SKYLINE PROPERTIES**, The wastewater treatment plant is west of Interstate Highway 45 in southern Houston, 1250 feet north of El Dorado Boulevard and approximately 386 feet west of the Interstate Highway 45 Frontage Road in Harris County, Texas, new, 13822-01.

Issued in Austin, Texas, on February 1, 1996

TRD-9601420

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 1, 1996

## Notice of Opportunity to Comment on Permitting Actions

For the Week Ending February 2, 1996

The following applications will be signed by the Executive Director in accordance with 30 TAC §263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested 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 (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Application Number 23-863D by the City of La Grulla for a Texas Water Code, §11.122 Water Use Permit Application. Amendment to Certificate Number 23-863 to sever 138.35 acre-feet of Class "B" irrigation water rights from Certificate Number 23-570, and to change ownership, point of diversion, purpose and place of use authorized for these water rights and to combine them with water rights owned by applicant under Certificate Number 23-863, as amended, Rio Grande, Rio Grande Basin, Starr County, Texas. (Kellye Rila)

APPLICATION NUMBER 23-66G BY EAST RIO HONDO WATER SUPPLY CORPORATION FOR AN AMENDMENT TO CERTIFICATE OF ADJUDICATION NUMBER 23-66, AS AMENDED, PURSUANT TO TWC §11.122. Applicant seeks to amend Certificate Number 23-66, as amended, to change ownership of 43.975 acre-feet of Class "B" irrigation water rights, point of diversion, purpose of use from irrigation to municipal (43.975 acre-feet of Class "B" irrigation water rights X .4 = 17.59 acre-feet of municipal priority water rights) and place of use to their service area, Rio Grande, Rio Grande Basin, Cameron County, Texas. (RENEE' TUGGLE)

SAN ANTONIO WATER SYSTEM for a minor amendment to Permit Number 10137-040 in order to convert the method of disinfection from chlorination to an ultraviolet (UV) light disinfection system. The permit currently authorizes a discharge of treated domestic wastewater effluent at a final volume not to exceed an average flow of 8,500,000 gallons per day, which will remain the same. The Medio Creek Wastewater Treatment Plant is approximately 1,300 feet north of the point where U.S. Highway 90 crosses Medio Creek and approximately 1.25 miles west of Interstate Highway 410 in Bexar County, Texas.

KOPPERS INDUSTRIES, INC. for a minor amendment to Permit Number 00746 in order to remove Outfall 001, remove process wastewater from the new Outfall 001 (former Outfall 002) and to add treated groundwater to the wastestream through this new Outfall 001. The permit currently authorizes a discharge of treated domestic wastewater effluent at a final volume not to exceed an average flow of 40,000 gallons per day, which will remain the same. The Somerville Centralized Tie Plant, which is a wood preserving and treating facility is in the City of Somerville, Burtleson County, Texas.

Application Number 23-863E by the City of La Grulla for a Texas Water Code, §11.122, Water Use Permit Application. Amendment to Certificate Number 23-863 to sever 50 acre-feet of Class "B" irrigation water rights from Certificate Number 23-201, and to change ownership, point of diversion, purpose and place of use authorized for these water rights and to combine them with water rights owned by applicant under Certificate Number 23-863, as amended, Rio Grande, Rio Grande Basin, Starr County, Texas. (Kellye Rila)

Issued in Austin, Texas, on February 1, 1996.

TRD-9601419 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 1, 1996

## Public Utility Commission of Texas Correction of Error

The Public Utility Commission of Texas adopted amendments to §§23.41, 23.42, 23.44-23.46, 23.48, 23.49, 23.52, 23.55, 23.56, and 23.58. The rules appeared in the January 2, 1996, issue of the *Texas Register* (21 TexReg 78).

Under subsection (g)(2), language was left in with brackets that should have been deleted. The language which should be deleted is [without charge to the calling party unless the OSP provides access to emergency service providers. In providing access to emergency service providers, the] This language should not be part of the adopted rule.

## Notice of Application to Amend Certificate of Convenience and Necessity.

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 18, 1996, to amend a certificate of convenience and necessity pursuant to §§1.101, 3.051(b), 3.251, 3.253, and 3.254 of the Public Utility Regulatory Act of 1995 (PURA), Texas Civil Statutes, Article 1446c-0 (Vernon Supp. 1996). A summary of the application follows.

Docket Title and Number: APPLICATION OF SOUTH PLAINS TELEPHONE COOPERATIVE, INC. TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN LUBBOCK COUNTY, Docket Number 15249, before the Public Utility Commission of Texas.

The Application: In Docket Number 15249, South Plains Telephone Cooperative, Inc. seeks approval to amend the exchange area boundary between its Cone exchange and GTE Southwest's Idalou exchange in order to provide private line service to Elbert Roberts.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before February 9, 1996.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601375 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 31, 1996

## 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 on February 5, 1996, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific

contract for billing and collection services with SCI Long Distance Telephone.

**Tariff Title and Number:** Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with SCI Long Distance Telephone pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15282.

**The Application:** Southwestern Bell Telephone Company seeks approval of a customer-specific billing and collection services contract with SCI Long Distance Telephone. The services pursuant to this customer-specific contract will be offered anywhere within the state of Texas where SCI Long Distance Telephone 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, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf. <Pre>Issued in Austin, Texas, on January 31, 1996.

TRD-9601371      Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 31, 1996

◆      ◆      ◆

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 Incarnate Word College in San Antonio, Texas.

**Tariff Title and Number:** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Incarnate Word College in San Antonio, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15293.

**The Application:** Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for Incarnate Word College. The geographic service market for this specific service is the San Antonio, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601374      Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 31, 1996

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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 Incarnate Word College in San Antonio, Texas.

**Tariff Title and Number:** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Incarnate Word College in San Antonio, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15292.

**The Application:** Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for Incarnate Word College. The geographic service market for this specific service is the San Antonio, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601373      Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 31, 1996

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### Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on February 5, 1996, pursuant to Public Utility Commission Substantive Rule 23.28 for approval to waive service connection charges for a promotional period.

**Tariff Title and Number:** Application of Century Telephone of Port Aransas, Inc. for Promotional Waiver of Custom Calling Service Connection Charges pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 15291.

**The Application:** Century Telephone of Port Aransas, Inc. proposes to waive the service connection charges related to the installation of Custom Calling Services for the 60-day period March 1 through April 31, 1996, for both business and residential customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601372      Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 31, 1996

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### Public Notice

On January 26, 1996, Southwestern Bell Telephone Company (SWB) filed notice to file LRIC studies pursuant to Substantive Rule §23.91 for Interoffice Switching Orgi-

nating per Conversation per Minute; Interoffice Switching Terminating per Conversation per Minute; Interoffice Switching Originating Set-up per Message; Interoffice Switching Terminating Set-up per Message; Interoffice Switching per Conversation Minute; Interoffice Switching Set-up per Message; Measurement Cost per Message; Switched Facility per Conversation Minute; Switched Facility Set-up per Message; Tandem Switching per Conversation Minute; Tandem Switching Set-up per Message; Switched Channel Termination per Conversation Minute; Switched Channel Termination set-up per Message; VG Dedicated Transport Termination per Bandwidth Specific I/O Channel; and VG Level Dedicated Interoffice Facility per Bandwidth Specific I/O Channel in Project Numbers 12475 and 12481, Applications of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Workplans Pursuant to Substantive Rule 23.91. SWB expects to file these studies on February 8, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by March 15, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on January 31, 1996.

TRD-9601376 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 31, 1996

◆ ◆ ◆  
**Texas Department of Transportation**  
**Request for Proposals**

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Request for Proposal Number 20-6RFP5001 for engineering of services of five Professional Engineering Firms as prime providers to provide Schematic and Design Engineering Services for the Beaumont District. All work will be independently performed on five proposed transportation improvement projects in the Beaumont District. The work will be performed in Jefferson, Orange, Hardin, Jasper, and Tyler Counties. The total of five prime provider firms will be selected for inclusion in one ranked provider pool. All responding firms will be ranked in accordance with their responses to the detailed selection criteria presented in the official Request for Proposal. The top five ranked firms will be selected for the pool.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by Fax at (409) 898-5801, or hand-delivered to TxDOT, Beaumont District Office, Attention: Karen Davis, P.E., 8350 Eastex Freeway, Beaumont, Texas 77708, or mailed to P.O. Box 3468, Beaumont, Texas 77704-3468. Letters of interest will be received until 5:00 p.m. on Friday,

February 23, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and refer to RFP #20-6RFP5001. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet). TxDOT will not issue Request for Proposal packet without receipt of letter of interest.

Pre-proposal Meeting: A pre-proposal meeting will be held on Thursday, March 7, 1996, at the TxDOT District Office in Beaumont at the above address at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting).

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or serves such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Karen Davis, P.E., at (409) 898-5820 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for RFP #20-6RFP5001 will be accepted until 5:00 p.m. on Friday, March 15, 1996 at the TxDOT Beaumont District Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Karen Davis, P.E., at (409) 892-7311 or Fax (409) 898-5801.

Issued in Austin, Texas, on February 1, 1996.

TRD-9601521 Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: February 5, 1996

◆ ◆ ◆  
Notice on Invitation: The Texas Department of Transportation (TxDOT), pursuant to Texas Government Code, Chapter 2254, Subchapter A, intends to engage an engineer to provide the following services as shown below. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Numbers 09-645P5003, 09-645P5005 and 09-645P5010: For the design of On and Off System structures including roadway approaches. All work will be performed on selected structures in Bell, Bosque, Coryell, Falls, Hamilton, Hill, Limestone and McLennan Counties. The Engineer will not be required to maintain a local office in these counties. Contracts will be for a three year period with a maximum dollar amount of \$700,000 per contract.

Deadline: Deadline for letters of interest notifying TxDOT of the Provider intent to submit a proposal, is February 21, 1996 at 5:00 p.m. at the TxDOT Waco District Office, 100 South Loop Drive, P.O. Box 1010, Waco, Texas 76703-1010. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the Letter of Interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet.) TxDOT will not issue Re-

quest for Proposal packet without receipt of letter of interest.

**Pre-proposal Meeting:** A mandatory pre-proposal meeting will be held on Tuesday, February 27, 1996 at the Texas Department of Transportation District Office at 100 South Loop Drive, Waco, Texas, at 10:00 a.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Ronald E. Koester, P.E. at (817) 867-2860 at least two working days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline:** Proposals for contracts 09-645P5003, 09-645P5005 and 09-645P5010 will be accepted until 5:00 p.m. on Friday, March 8, 1996 at the TxDOT Waco District Office, 100 South Loop Drive, P.O. Box 1010, Waco, Texas 76703-1010.

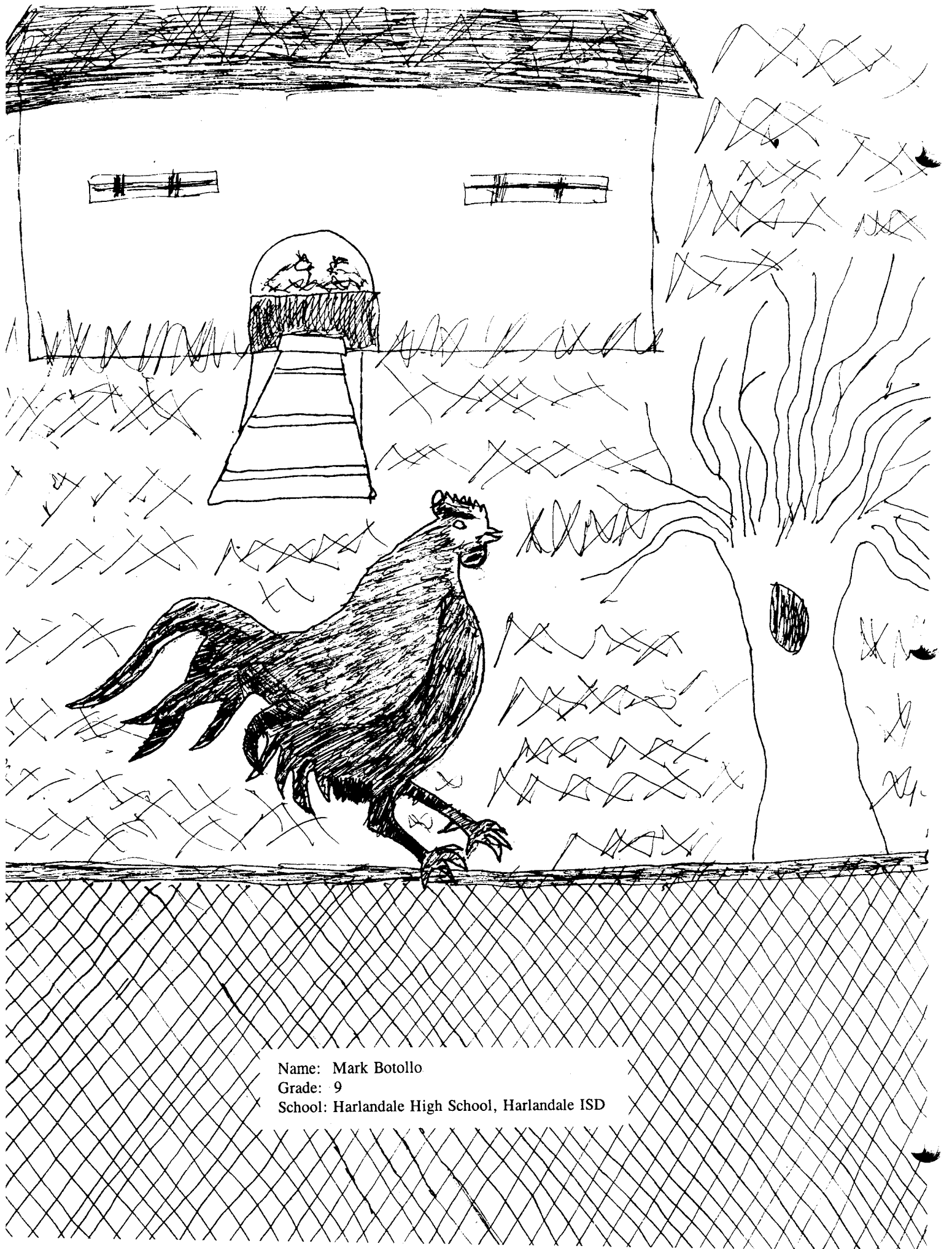
**Agency Contact:** Requests for additional information regarding this notice of invitation should be addressed to Ronald E. Koester, P.E., (817) 867-2860, Fax (817) 867-2738.

Issued in Austin, Texas, on February 1, 1996.

TRD-9601522      Robert E. Shaddock  
                                 General Counsel  
                                 Texas Department of Transportation

Filed: February 5, 1996





Name: Mark Botollo  
Grade: 9  
School: Harlandale High School, Harlandale ISD

# TAC Titles Affected

The following is a list of the administrative rules that were published in the January 1996 issues.

## TITLE 1. ADMINISTRATION

### Part I. Office of the Governor

1 TAC §5.195.....477

### Part III. Office of the Attorney General

1 TAC §§61.2, 61.7, 61.10, 61.20, 61.23, 61.25, 61.31, 61.33, 61.35.....15

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

4 TAC §1.310.....191

4 TAC §5.400, §5.401.....659

4 TAC §§7.1, 7.3-7.5, 7.7.....211

4 TAC §7.3, §7.4.....211

4 TAC §9.30.....659

4 TAC §§10.1-10.6.....659

4 TAC §§17.1, 17.3-17.5, 17.9.....643

4 TAC §17.2, §17.10.....644

4 TAC §17.30, §17.31.....193

4 TAC §19.3.....261

## TITLE 7. BANKING AND SECURITIES

### Part II. Texas Department of Banking

7 TAC §25.24.....417

7 TAC §26.1.....418

### Part V. Office of Consumer Credit

7 TAC §§81.1-81.49.....660

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

10 TAC §§53.50-53.62.....645

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

16 TAC §1.49.....650

16 TAC §3.10.....657

16 TAC §§15.301, 15.305, 15.310, 15.315, 15.320, 15.325, 15.330, 15.335, 15.340, 15.345, 15.350.....503

### Part II. Public Utility Commission of Texas

16 TAC §23.3.....480

16 TAC §23.3, §23.6.....57

16 TAC §§23.11-23.13, 23.17.....60

16 TAC §23.11.....49, 581

16 TAC §23.12.....62

16 TAC §23.13.....480

16 TAC §23.18.....660

16 TAC §23.21.....481, 503

16 TAC §§23.21, 23.24, 23.26-23.28.....63

16 TAC §§23.21, 23.26, 23.28.....75

16 TAC §23.22.....481

16 TAC §23.23.....293, 307, 482

16 TAC §23.31, §23.33.....75

16 TAC §23.31.....482

16 TAC §§23.34-23.37.....484

16 TAC §§23.41, 23.42, 23.44-23.46, 23.48, 23.49, 23.52, 23.55, 23.56, 23.58.....78

16 TAC §23.43.....313

16 TAC §23.44.....492

16 TAC §23.61, §23.69.....92

16 TAC §23.91.....99

### Part IX. Texas Lottery Commission

16 TAC §402.541.....563

16 TAC §402.545.....564

16 TAC §402.546.....566

16 TAC §402.547.....567

16 TAC §402.548.....567

16 TAC §402.549.....567

16 TAC §402.554.....570

16 TAC §402.555.....571

16 TAC §402.556.....573

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

19 TAC §61.1031.....582

19 TAC §§65.1-65.4.....584

19 TAC §68.11.....584

19 TAC §§68.12-68.14.....584

19 TAC §§68.21-68.26.....584

19 TAC §§68.32-68.34.....584

19 TAC §§68.111-68.113.....584

19 TAC §§78.1-78.3	585
19 TAC §78.10, §78.11	585
19 TAC §§97.1-97.9	585
19 TAC §§97.1-97.7	585
19 TAC §105.1	586
19 TAC §105.11	586
19 TAC §105.31	586
19 TAC §109.1	294
19 TAC §§109.21-109.24	294
19 TAC §§109.21-109.23	296
19 TAC §§109.41-109.44	295
19 TAC §109.41	296
19 TAC §109.61	295
19 TAC §113.1	587
19 TAC §§113.21-113.22	587
19 TAC §§113.31-113.32	587
19 TAC §121.1	587
19 TAC §§121.11-121.14	587
19 TAC §§121.31-121.35	587
19 TAC §§121.41, 121.42	588
19 TAC §129.1	588
19 TAC §129.1, §129.22	588
19 TAC §129.21, §129.22	589
19 TAC §§176.1-176.21	590
19 TAC §§176.101-176.122	592
19 TAC §§176.10-176.20, 176.22, 176.23, 176.25-176.34	597

**TITLE 22. EXAMINING BOARDS**

**Part IV. Texas Cosmetology Commission**

22 TAC §89.34	49
---------------	----

**Part V. State Board of Dental Examiners**

22 TAC §103.2	415
---------------	-----

**Part IX. Texas State Board of Medical Examiners**

22 TAC §161.1	105
22 TAC §163.1	105
22 TAC §§163.6-163.9, 163.11-163.13	105
22 TAC §§163.14-163.16	105
22 TAC §163.14	106
22 TAC §163.15	106
22 TAC §§166.1, 166.2, 166.4	106
22 TAC §166.3	107
22 TAC §175.1, §175.2	107
22 TAC §§177.1-177.15	107
22 TAC §177.1	108
22 TAC §183.2	108

22 TAC §183.17	13
22 TAC §183.20	108
22 TAC §§185.1-185.29	109
22 TAC §187.41	109
22 TAC §§193.2-193.4, 193.8	13

**Part XI. Board of Nurse Examiners**

22 TAC §217.20	598
----------------	-----

**Part XV. Texas State Board of Pharmacy**

22 TAC §281.24	109
22 TAC §§283.2, 283.4-283.6	110
22 TAC §291.10	261

**Part XVIII. Texas State Board of Podiatric Medical Examiners**

22 TAC §§371.1-371.6	598
22 TAC §§371.7-371.15	598
22 TAC §§378.2-378.4	316

**Part XX. Texas Board of Private Investigators and Private Security Agencies**

22 TAC §423.4	317
22 TAC §423.11, §423.12	318
22 TAC §423.22	318
22 TAC §423.46	318
22 TAC §423.47	318
22 TAC §423.60	319
22 TAC §§428.3-428.10	319
22 TAC §429.5	322
22 TAC §§435.1, 435.9, 435.15	322
22 TAC §435.16	323
22 TAC §445.1	323
22 TAC §451.4	324
22 TAC §451.5	324
22 TAC §452.1	324
22 TAC §455.1	325

**Part XXI. Texas State Board of Examiners of Psychologists**

22 TAC §461.17	113
22 TAC §461.18	17
22 TAC §463.6	17
22 TAC §463.23	262
22 TAC §463.31	247
22 TAC §465.10	18
22 TAC §465.19	18
22 TAC §465.20	248
22 TAC §465.33	19
22 TAC §471.1	19
22 TAC §473.1	20

**Part XXIII. Texas Real Estate Commission**



22 TAC §535.61.....	431
22 TAC §§535.62-535.64.....	419
22 TAC §535.71, §535.72.....	420
22 TAC §535.132.....	421
22 TAC §525.300.....	421
<b>Part XXIX. Texas Board of Professional Land Surveying</b>	
22 TAC §663.13.....	194
22 TAC §663.21.....	194
<b>Part XXXII. Texas State Board of Examiners of Perfusionists</b>	
22 TAC §761.14.....	20
<b>Part XXXIV. Texas State Board of Social Worker Examiners</b>	
22 TAC §781.401.....	114

## TITLE 25. HEALTH SERVICES

<b>Part I. Texas Department of Health</b>	
25 TAC §38.4.....	305
<b>Part II. Texas Department of Mental Health and Mental Retardation</b>	
25 TAC §§401.8, 401.10, 401.12, 401.14, 401.16-401.18, 401.21, 401.23-401.26.....	508
25 TAC §401.27.....	501
25 TAC §401.58.....	325
25 TAC §§405.51-405.62.....	296
25 TAC §§405.51-405.63.....	297
25 TAC §407.171.....	509
25 TAC §§408.101-408.106.....	249

## TITLE 28. INSURANCE

<b>Part I. Texas Department of Insurance</b>	
28 TAC §1.49.....	651
28 TAC §1.302.....	492
28 TAC §§5.1301-5.1307.....	422
28 TAC §5.4001.....	424
28 TAC §5.4201.....	426
28 TAC §5.4501.....	427
28 TAC §5.9101.....	429
28 TAC §7.1301.....	493
28 TAC §7.1404.....	494
28 TAC §9.1.....	651
28 TAC §11.1701.....	509
28 TAC §29.1.....	496
28 TAC §§29.1-29.7.....	495
28 TAC §§29.201-29.207.....	495
28 TAC §§29.601-29.607.....	496
<b>Part II. Texas Workers' Compensation Commission</b>	
28 TAC §108.1.....	510

28 TAC §109.1.....	511
28 TAC §§125.1-125.3.....	512
28 TAC §126.10.....	475, 497
28 TAC §134.100.....	513
28 TAC §140.5.....	498
28 TAC §147.11.....	514
28 TAC §160.2.....	515
28 TAC §160.3.....	515
28 TAC §§165.1-165.5.....	499

## TITLE 30. ENVIRONMENTAL QUALITY

<b>Part I. Texas Natural Resource Conservation Commission</b>	
30 TAC §115.621, §115.625.....	516
30 TAC §116.12.....	301
30 TAC §116.211.....	301
30 TAC §117.451.....	518
30 TAC §§117.510, 117.520, 117.530.....	518
30 TAC §117.601.....	518
30 TAC §§120.101-120.103, 120.105-120.110.....	21
30 TAC §§291.3, 291.5, 291.8, 291.13-291.15.....	117
30 TAC §§291.21-291.23, 291.26, 291.29-291.31.....	118
30 TAC §291.41.....	121
30 TAC §§291.71-291.73, 291.75, 291.76.....	121
30 TAC §291.73.....	121
30 TAC §§291.80-291.90.....	121
30 TAC §§291.85-291.89.....	128
30 TAC §§291.91-291.95.....	128
30 TAC §§291.101, 291.102, 291.105-291.118.....	129
30 TAC §§291.101-291.119.....	129
30 TAC §§291.121-291.123, 291.125, 291.127.....	133
30 TAC §§291.141-291.143.....	133
30 TAC §§321.151-321.159.....	197
30 TAC §§321.211-321.220.....	200
30 TAC §§321.231-321.240.....	203
30 TAC §§321.251-321.259.....	206
30 TAC §330.601, §330.602.....	518
30 TAC §337.11.....	133
<b>TITLE 31. NATURAL RESOURCES AND CONSERVATION</b>	
<b>Part I. General Land Office</b>	
31 TAC §§13.31-13.38.....	519
31 TAC §13.39, §13.40.....	519
31 TAC §17.2.....	663
31 TAC §17.41.....	664

**Part X. Texas Water Development Board**

31 TAC §353.15 .....	664
31 TAC §363.33 .....	664
31 TAC §363.42 .....	665
31 TAC §363.204 .....	665
31 TAC §363.205 .....	657
31 TAC §363.224, §363.225 .....	665
31 TAC §363.511 .....	665
31 TAC §§375.1-375.3 .....	666
31 TAC §§375.12, 375.13, 375.19 .....	666
31 TAC §§375.14, 375.17, 375.19 .....	666
31 TAC §375.18 .....	657
31 TAC §375.36, §375.38 .....	667
31 TAC §375.51, §375.52 .....	667
31 TAC §375.61 .....	667
31 TAC §375.72 .....	668
31 TAC §375.75 .....	667
31 TAC §375.86 .....	667
31 TAC §375.87 .....	667
31 TAC §375.102 .....	668

**Part XV. Texas Low-Level Radioactive Waste Disposal Authority**

31 TAC §449.71 .....	22
31 TAC §§449.81-449.87 .....	23

**TITLE 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

34 TAC §3.193 .....	599
34 TAC §3.287 .....	599
34 TAC §3.354 .....	601
34 TAC §3.397 .....	668
34 TAC §3.402 .....	668
34 TAC §3.543 .....	668
34 TAC §3.577 .....	669
34 TAC §3.701 .....	669
34 TAC §3.702 .....	669
34 TAC §3.721 .....	326
34 TAC §3.830 .....	574
34 TAC §3.1001 .....	303
34 TAC §3.1101 .....	327
34 TAC §3.1102 .....	327
34 TAC §3.1103 .....	330
34 TAC §9.4026 .....	669
34 TAC §9.4028 .....	671

**Part V. Texas County and District Retirement System**

34 TAC §101.6 .....	134
34 TAC §101.7 .....	134

34 TAC §103.3 .....	134
34 TAC §105.2 .....	134
34 TAC §§109.3, 109.6-109.10, 109.13, 109.14, 135	

**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part I. Texas Department of Public Safety**

37 TAC §3.59, §3.62 .....	253
---------------------------	-----

**Part III. Texas Youth Commission**

37 TAC §88.1 .....	652
37 TAC §93.1 .....	652
37 TAC §93.31 .....	653

**Part VI. Texas Department of Criminal Justice**

37 TAC §§151.4, 151.6, 151.51, 151.53, 151.73 .....575	
37 TAC §151.21 .....	578
37 TAC §152.12 .....	601
37 TAC §152.51 .....	602
37 TAC §155.21 .....	579
37 TAC §163.43 .....	579

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

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

40 TAC §§11.103, 11.107, 11.121 .....	331
40 TAC §13.105, §13.110 .....	25
40 TAC §15.100 .....	262
40 TAC §15.215 .....	262
40 TAC §§15.450, 15.453, 15.455 .....	263
40 TAC §15.502 .....	263
40 TAC §§47.2902-47.2905, 47.2912 .....	136
40 TAC §47.2906, §47.2911 .....	136
40 TAC §47.6901 .....	136
40 TAC §48.2704 .....	331
40 TAC §50.4 .....	431
40 TAC §50.403 .....	432
40 TAC §72.501 .....	331
40 TAC §§95.101, 95.103, 95.107, 95.109, 95.111, 95.115, 95.119, 95.121, 95.123, 95.125 .....	520

**Part IV. Texas Commission for the Blind**

40 TAC §§169.1-169.15 .....	26
40 TAC §§169.1-169.5 .....	27
40 TAC §§169.10-169.16 .....	28
40 TAC §§169.25-169.34 .....	28
40 TAC §169.40 .....	30
40 TAC §§169.50-169.52 .....	31
40 TAC §§169.60-169.63 .....	31

*Part XX. Texas Workforce Commission*

40 TAC §801.1.....	520
40 TAC §801.2.....	654
40 TAC §801.3.....	656

**TITLE 43. TRANSPORTATION**

*Part I. Texas Department of Transportation*

43 TAC §9.6, §9.8.....	32
43 TAC §9.21.....	33
43 TAC §9.40.....	34
43 TAC §§9.50-9.61.....	34
43 TAC §§21.142, 21.149, 21.150, 21.153, 21.160 137	
43 TAC §21.411, §21.421.....	44
43 TAC §25.503.....	45
43 TAC §29.3.....	46

## February - December 1996 Publication Schedule

The following is the February-December 1996 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Monday and Wednesday of the previous week, and deadlines for a Friday edition are Wednesday of the previous week and Monday of the week of publication. No issues will be published on February 23, March 15, November 8, December 3, and December 31. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
9 Friday, February 2	Wednesday, January 24	Monday, January 29	Monday, January 29
10 Tuesday, February 6	Monday, January 29	Wednesday, January 31	Wednesday, January 31
11 Friday, February 9	Wednesday, January 31	Monday, February 5	Monday, February 5
12 Tuesday, February 13	Monday, February 5	Wednesday, February 7	Wednesday, February 7
13 Friday, February 16	Wednesday, February 7	Monday, February 12	Monday, February 12
14 Tuesday, February 20	Monday, February 12	Wednesday, February 14	Wednesday, February 14
Friday, February 23	<i>No Issue Published</i>		
15 Tuesday, February 27	*Tuesday, February 20	Wednesday, February 21	Wednesday, February 21
16 Friday, March 1	Wednesday, February 21	Monday, February 26	Monday, February 26
17 Tuesday, March 5	Monday, February 26	Wednesday, February 28	Wednesday, February 28
18 Friday, March 8	Wednesday, February 28	Monday, March 4	Monday, March 4
19 Tuesday, March 12	Monday, March 4	Wednesday, March 6	Wednesday, March 6
Friday, March 15	<i>No Issue Published</i>		
20 Tuesday, March 19	Monday, March 11	Wednesday, March 13	Wednesday, March 13
21 Friday, March 22	Wednesday, March 13	Monday, March 18	Monday, March 18

22 Tuesday, March 26	Monday, March 18	Wednesday, March 20	Wednesday, March 20
23 Friday, March 29	Wednesday, March 20	Monday, March 25	Monday, March 25
24 Tuesday, April 2	Monday, March 25	Wednesday, March 27	Wednesday, March 27
25 Friday, April 5	Wednesday, March 27	Monday, April 1	Monday, April 1
Tuesday, April 9	<i>First Quarterly Index</i>		
26 Friday, April 12	Wednesday, April 3	Monday, April 8	Monday, April 8
27 Tuesday, April 16	Monday, April 8	Wednesday, April 10	Wednesday, April 10
28 Friday, April 19	Wednesday, April 10	Monday, April 15	Monday, April 15
29 Tuesday, April 23	Monday, April 15	Wednesday, April 17	Wednesday, April 17
30 Friday, April 26	Wednesday, April 17	Monday, April 22	Monday, April 22
31 Tuesday, April 30	Monday, April 22	Wednesday, April 24	Wednesday, April 24
32 Friday, May 3	Wednesday, April 24	Monday, April 29	Monday, April 29
33 Tuesday, May 7	Monday, April 29	Wednesday, May 1	Wednesday, May 1
34 Friday, May 10	Wednesday, May 1	Monday, May 6	Monday, May 6
35 Tuesday, May 14	Monday, May 6	Wednesday, May 8	Wednesday, May 8
36 Friday, May 17	Wednesday, May 8	Monday, May 13	Monday, May 13
37 Tuesday, May 21	Monday, May 13	Wednesday, May 15	Wednesday, May 15
38 Friday, May 24	Wednesday, May 15	Monday, May 20	Monday, May 20
39 Tuesday, May 28	Monday, May 20	Wednesday, May 22	Wednesday, May 22
40 Friday, May 31	Wednesday, May 22	*Friday, May 24	*Friday, May 24
41 Tuesday, June 4	*Tuesday, May 28	Wednesday, May 29	Wednesday, May 29
42 Friday, June 7	Wednesday, May 29	Monday, June 3	Monday, June 3
43 Tuesday, June 11	Monday, June 3	Wednesday, June 5	Wednesday, June 5
44 Friday, June 14	Wednesday, June 5	Monday, June 10	Monday, June 10
45 Tuesday, June 18	Monday, June 10	Wednesday, June 12	Wednesday, June 12
46 Friday, June 21	Wednesday, June 12	Monday, June 17	Monday, June 17

47 Tuesday, June 25	Monday, June 17	Wednesday, June 19	Wednesday, June 19
48 Friday, June 28	Monday, June 19	Wednesday, June 24	Wednesday, June 24
49 Tuesday, July 2	Wednesday, June 24	Wednesday, June 26	Wednesday, June 26
50 Friday, July 5	Wednesday, June 26	Monday, July 1	Monday, July 1
51 Tuesday, July 9	Monday, July 1	Wednesday, July 3	Wednesday, July 3
Friday, July 12	<i>2nd Quarterly Index</i>		
52 Tuesday, July 16	Monday, July 8	Wednesday, July 10	Wednesday, July 10
53 Friday, July 19	Wednesday, July 10	Monday, July 15	Monday, July 15
54 Tuesday, July 23	Monday, July 15	Wednesday, July 17	Wednesday, July 17
55 Friday, July 26	Wednesday, July 17	Monday, July 22	Monday, July 22
56 Tuesday, July 30	Monday, July 22	Wednesday, July 24	Wednesday, July 24
57 Friday, August 2	Wednesday, July 24	Monday, July 29	Monday, July 29
58 Tuesday, August 6	Monday, July 29	Wednesday, July 31	Wednesday, July 31
59 Friday, August 9	Wednesday, July 31	Monday, August 5	Monday, August 5
60 Tuesday, August 13	Monday, August 5	Wednesday, August 7	Wednesday, August 7
61 Friday, August 16	Wednesday, August 7	Monday, August 12	Monday, August 12
62 Tuesday, August 20	Monday, August 12	Wednesday, August 14	Wednesday, August 14
63 Friday, August 23	Wednesday, August 14	Monday, August 19	Monday, August 19
64 Tuesday, August 27	Monday, August 19	Wednesday, August 21	Wednesday, August 21
65 Friday, August 30	Wednesday, August 21	Monday, August 26	Monday, August 26
66 Tuesday, September 3	Monday, August 26	Wednesday, August 28	Wednesday, August 28
67 Friday, September 6	Wednesday, August 28	*Friday, August 30	*Friday, August 30
68 Tuesday, September 10	*Tuesday, September 3	Wednesday, September 4	Wednesday, September 4
69 Friday, September 13	Wednesday, September 4	Monday, September 9	Monday, September 9
70 Tuesday, September 17	Monday, September 9	Wednesday, September 11	Wednesday, September 11
71 Friday, September 20	Wednesday, September 11	Monday, September 16	Monday, September 16

72 Tuesday, September 24	Monday, September 16	Wednesday, September 18	Wednesday, September 18
73 Friday, September 27	Wednesday, September 18	Monday, September 23	Monday, September 23
74 Tuesday, October 1	Monday, September 23	Wednesday, September 25	Wednesday, September 25
75 Friday, October 4	Wednesday, September 25	Monday, September 30	Monday, September 30
Tuesday, October 8	<i>Third Quarterly Index</i>		
76 Friday, October 11	Wednesday, October 2	Monday, October 7	Monday, October 7
77 Tuesday, October 15	Monday, October 7	Wednesday, October 9	Wednesday, October 9
78 Friday, October 18	Wednesday, October 9	Monday, October 14	Monday, October 14
79 Tuesday, October 22	Monday, October 14	Wednesday, October 16	Wednesday, October 16
80 Friday, October 25	Wednesday, October 16	Monday, October 21	Monday, October 21
81 Tuesday, October 29	Monday, October 21	Wednesday, October 23	Wednesday, October 23
82 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
83 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
Friday, November 8	<i>No Issue Published</i>		
84 Tuesday, November 12	Monday, November 4	Wednesday, November 6	Wednesday, November 6
85 Friday, November 15	Wednesday, November 6	*Friday, November 8	*Friday, November 8
86 Tuesday, November 19	*Tuesday, November 12	Wednesday, November 13	Wednesday, November 13
87 Friday, November 22	Wednesday, November 13	Monday, November 18	Monday, November 18
88 Tuesday, November 26	Monday, November 18	Wednesday, November 20	Wednesday, November 20
89 Friday, November 29	Wednesday, November 20	Monday, November 25	Monday, November 25
Tuesday, December 3	<i>No Issue Published</i>		
90 Friday, December 6	Wednesday, November 27	Monday, December 2	Monday, December 2
91 Tuesday, December 10	Monday, December 2	Wednesday, December 4	Wednesday, December 4
92 Friday, December 13	Wednesday, December 4	Monday, December 9	Monday, December 9
93 Tuesday, December 17	Monday, December 9	Wednesday, December 11	Wednesday, December 11
94 Friday, December 20	Wednesday, December 11	Monday, December 16	Monday, December 16

95 Tuesday, December 24	Monday, December 16	Wednesday, December 18	Wednesday, December 18
96 Friday, December 27	Wednesday, December 18	Monday, December 23	Monday, December 23
Tuesday, December 31	<i>No Issue Published</i>		



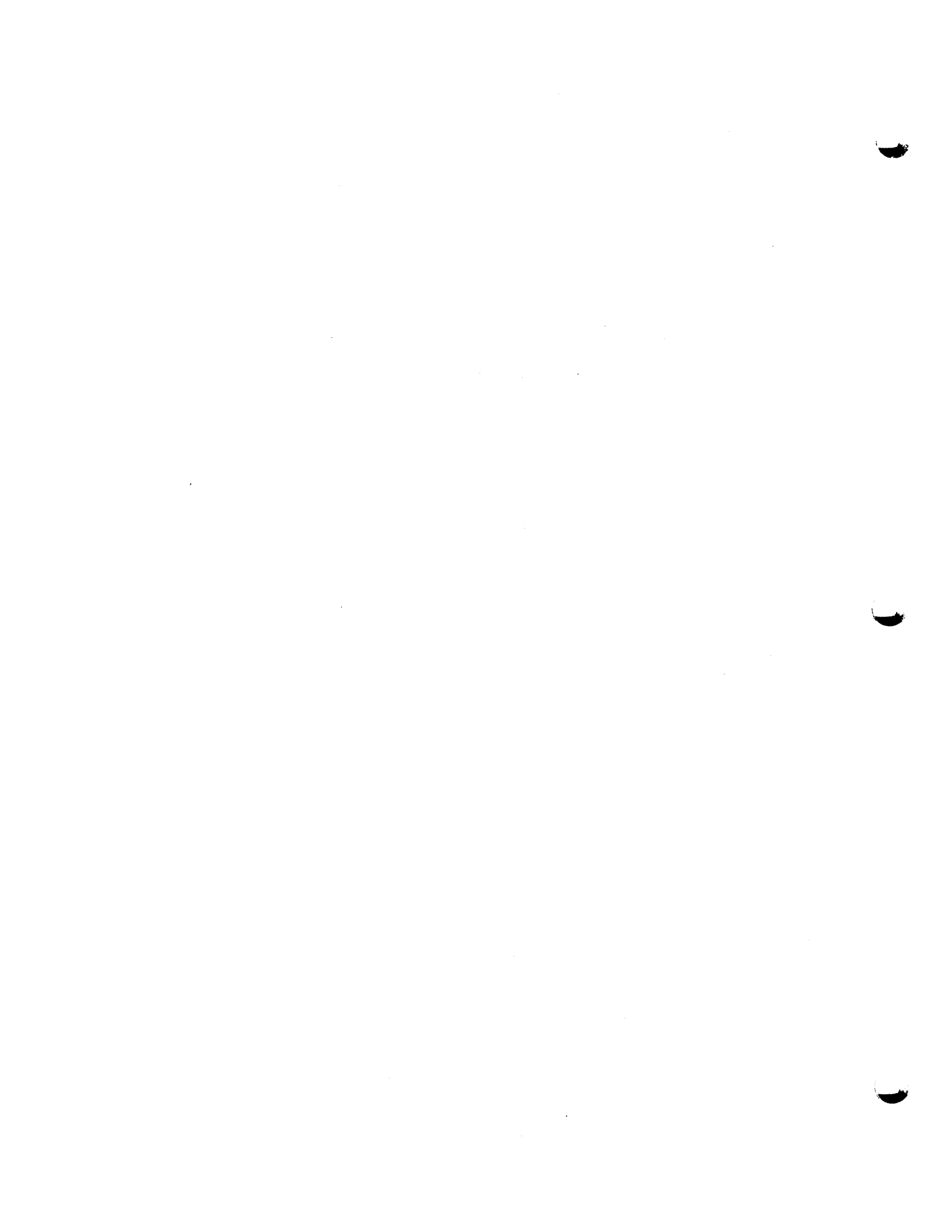












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