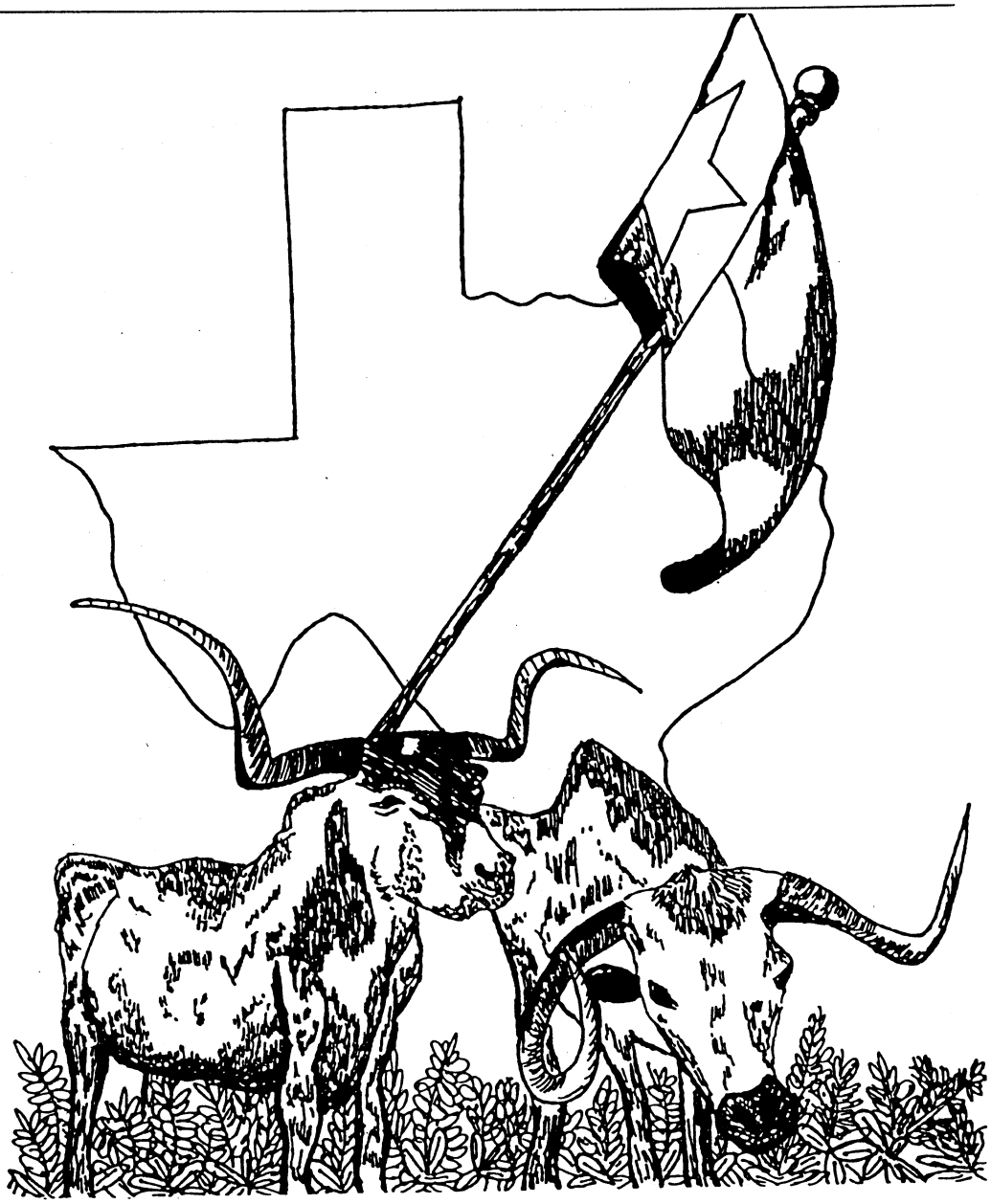
TEXAS REGISTER

Volume 21, Number 21 March 22, 1996 Page 2333-2437



This month's front cover artwork:

Artist: Lakeisha R. Hines

11th grade

Sulphur Springs High School, Sulphur Springs ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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TEXAS REGISTER

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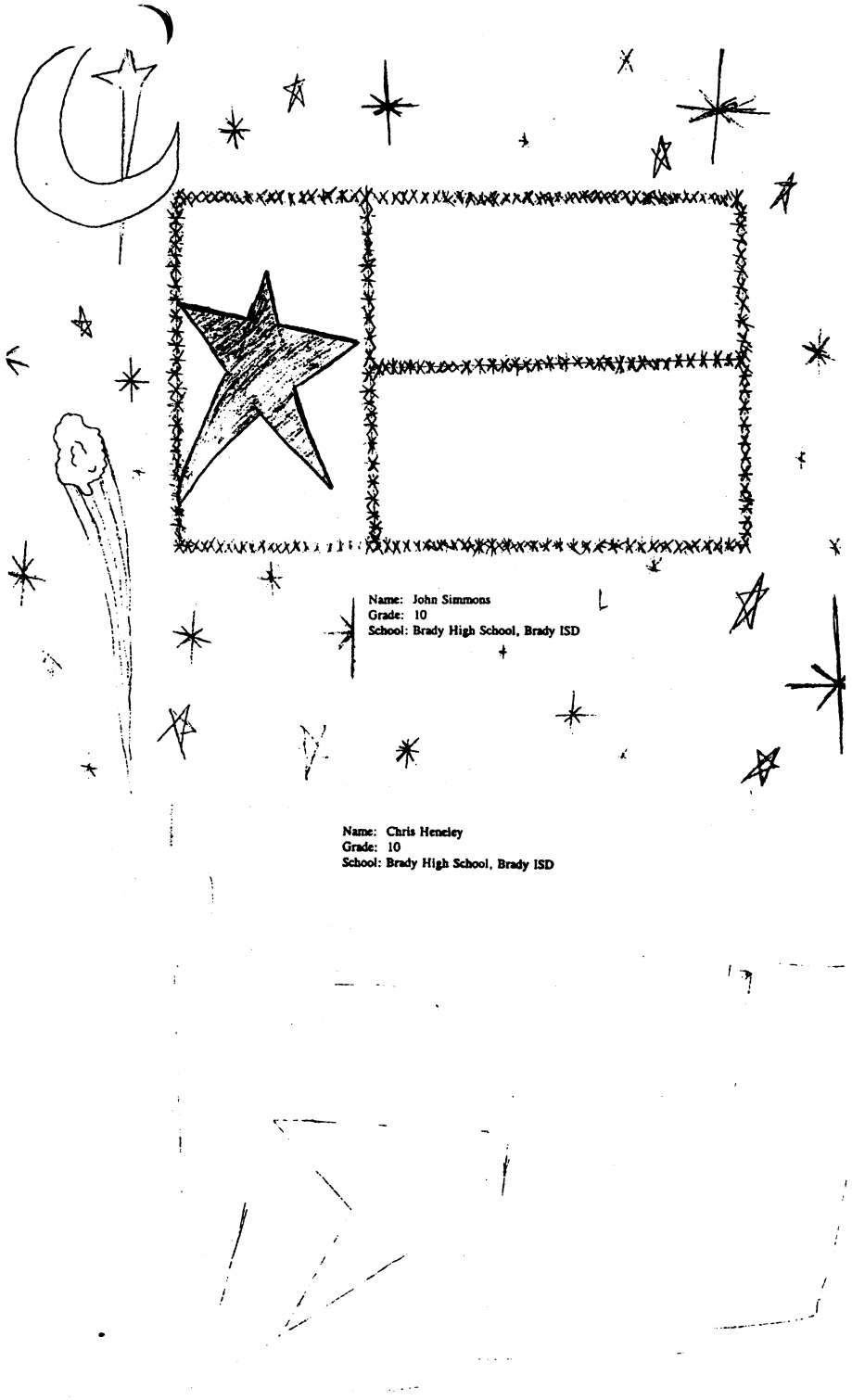
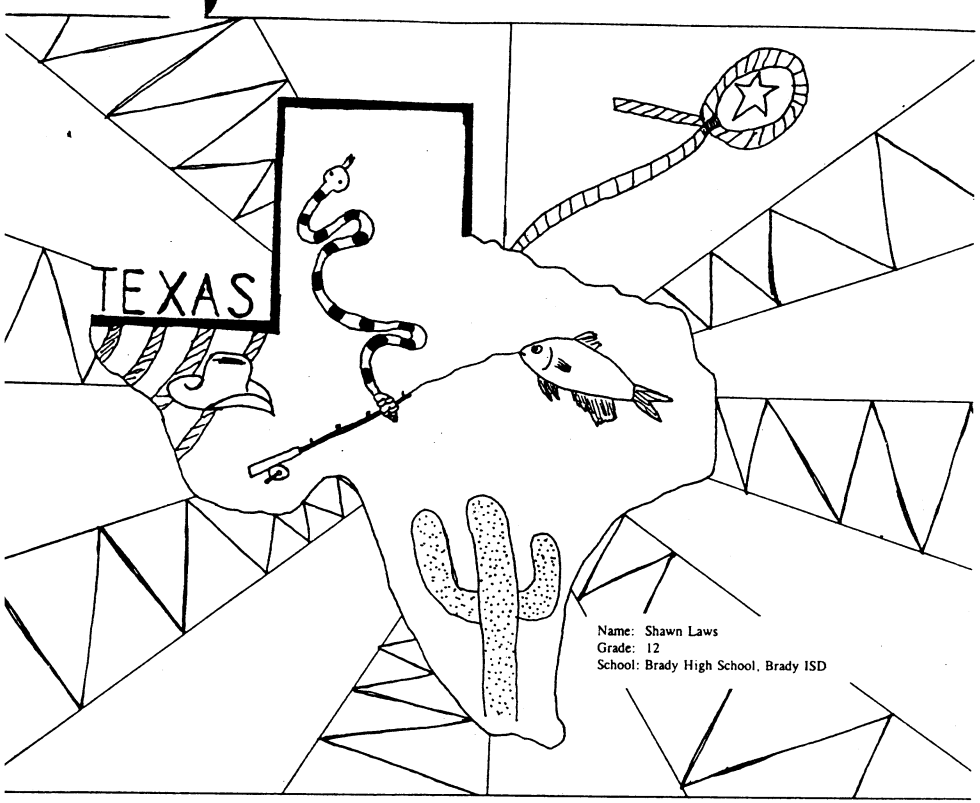


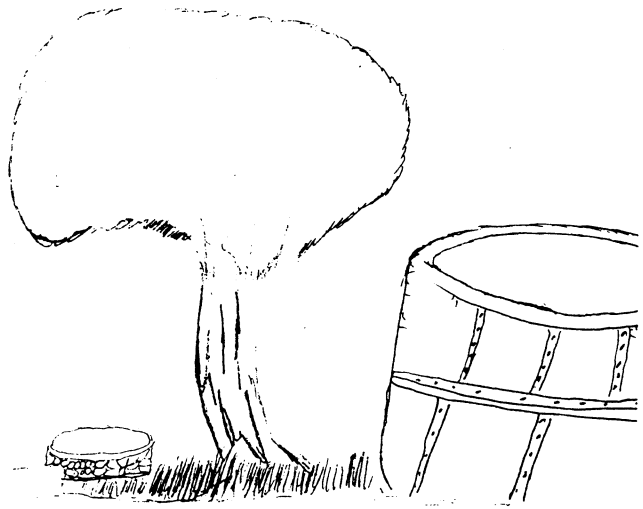
Name: John Simmons
Grade: 10
School: Brady High School, Brady ISD

Name: Chris Heneley
Grade: 10
School: Brady High School, Brady ISD

Name: Guadalupe A. Martinez
Grade: 10
School: Brady High School, Brady ISD



Name: Shawn Laws
Grade: 12
School: Brady High School, Brady ISD

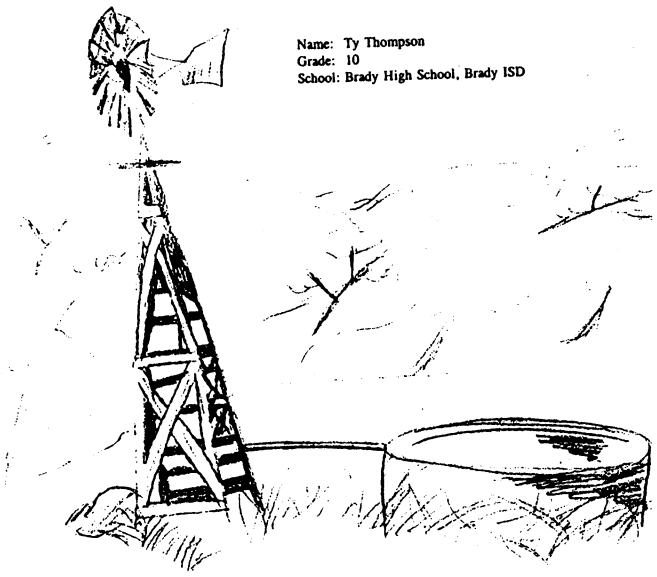


Name: Cord Armke
Grade: 10
School: Brady High School, Brady ISD

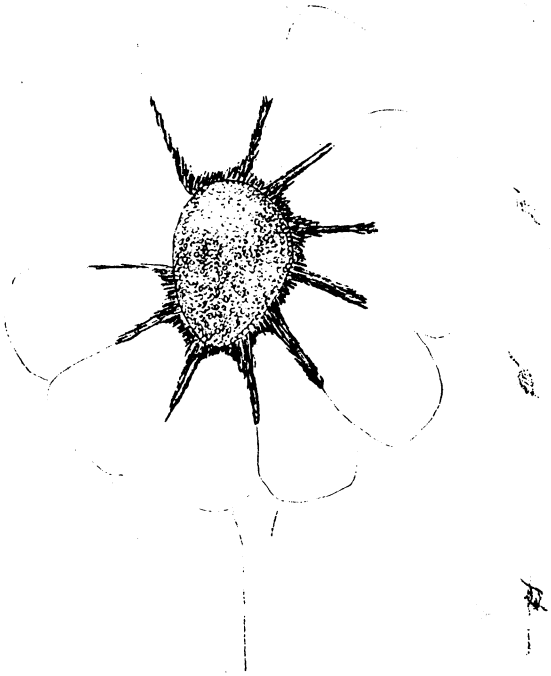
Name: Guadalupe A. Martinez
Grade: 10
School: Brady High School, Brady ISD

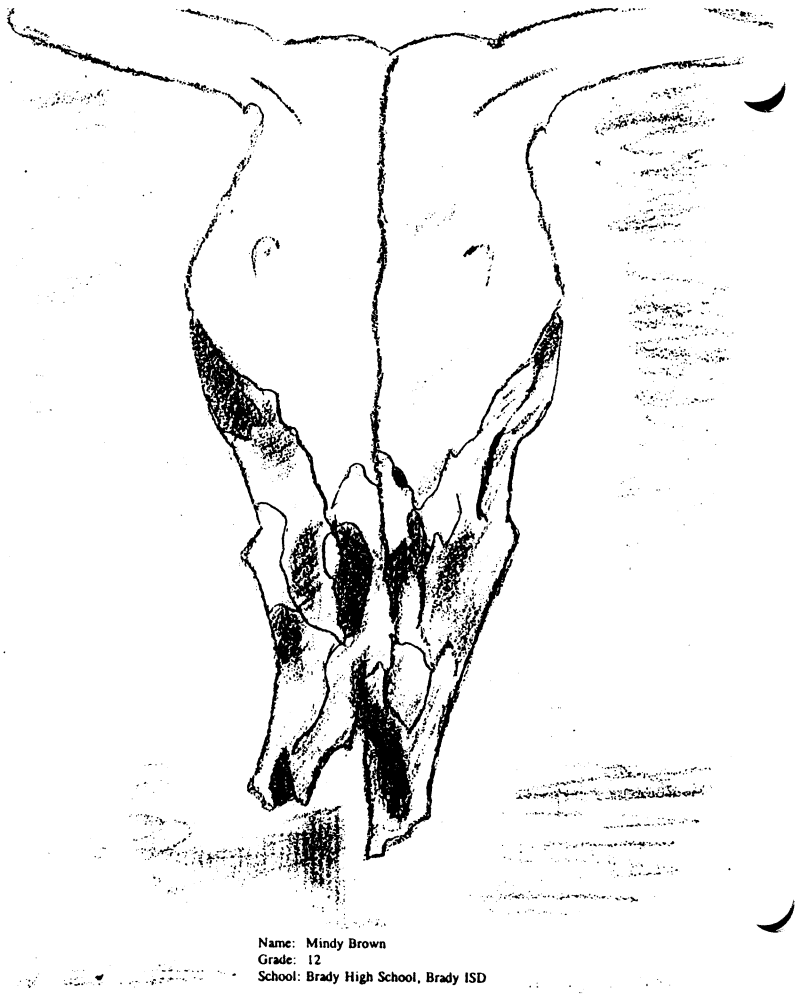
Name: Brandy Elliott
Grade: 12
School: Brady High School, Brady ISD

Name: Ty Thompson
Grade: 10
School: Brady High School, Brady ISD



Name: Cindy Ranne
Grade: 11
School: Brady High School, Brady ISD



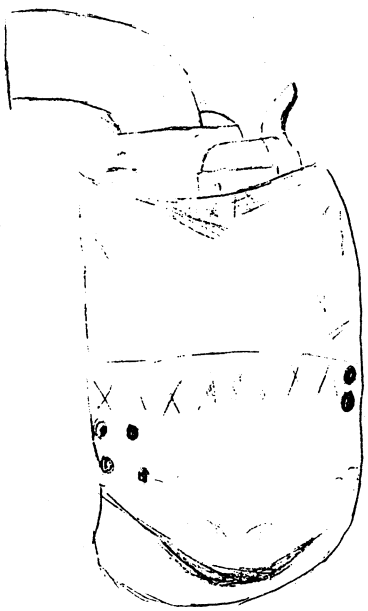


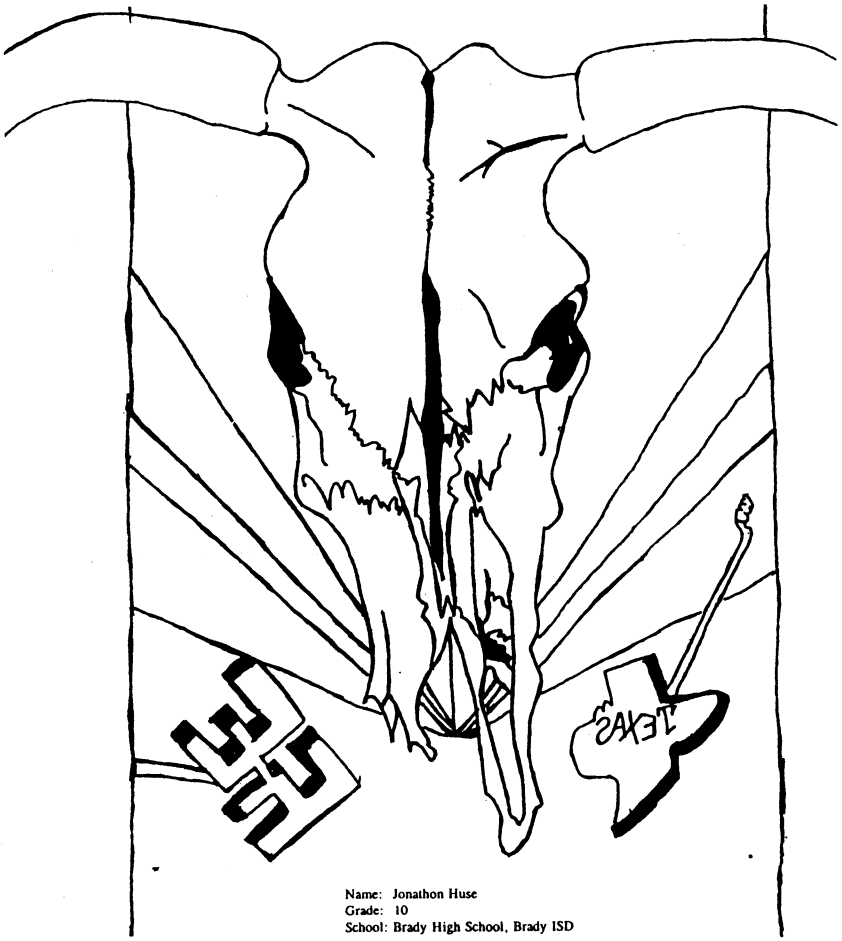
Name: Mindy Brown
Grade: 12
School: Brady High School, Brady ISD

Name: Meka Sephus
Grade: 12
School: Brady High School, Brady ISD

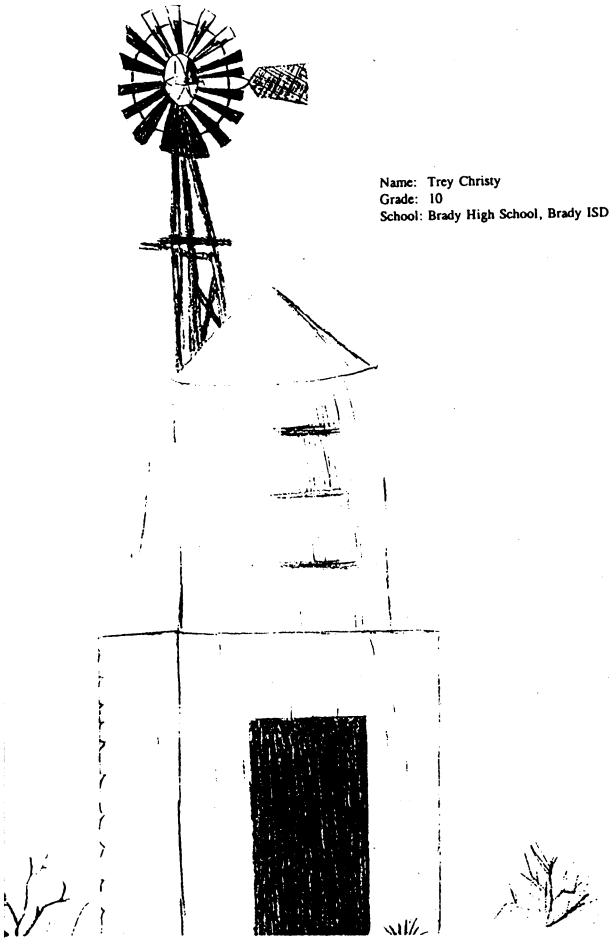
Name: Delores Farias
Grade: 12
School: Brady High School, Brady ISD

Name: Aaron Condron
Grade: 9
School: Brady High School, Brady ISD

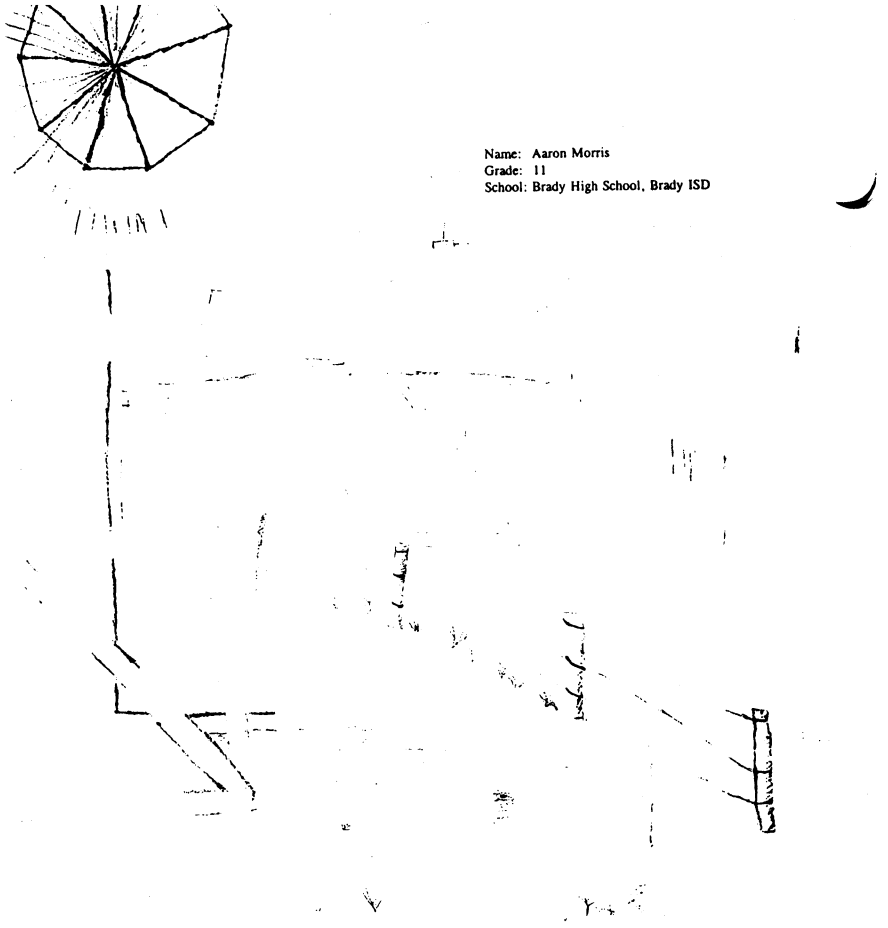




Name: Jonathon Huse
Grade: 10
School: Brady High School, Brady ISD

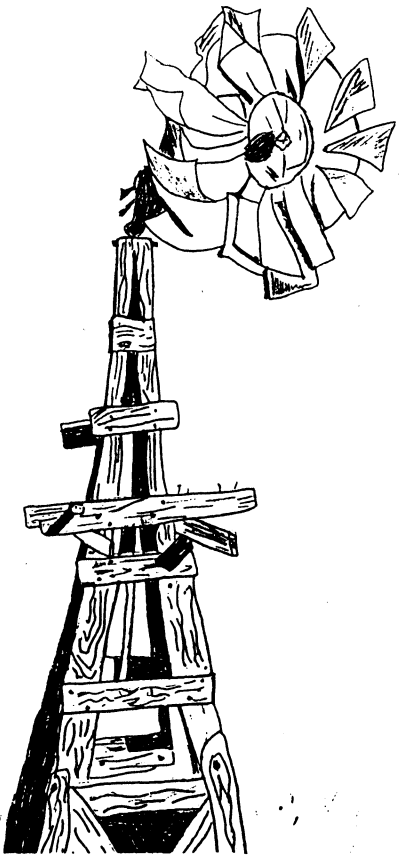


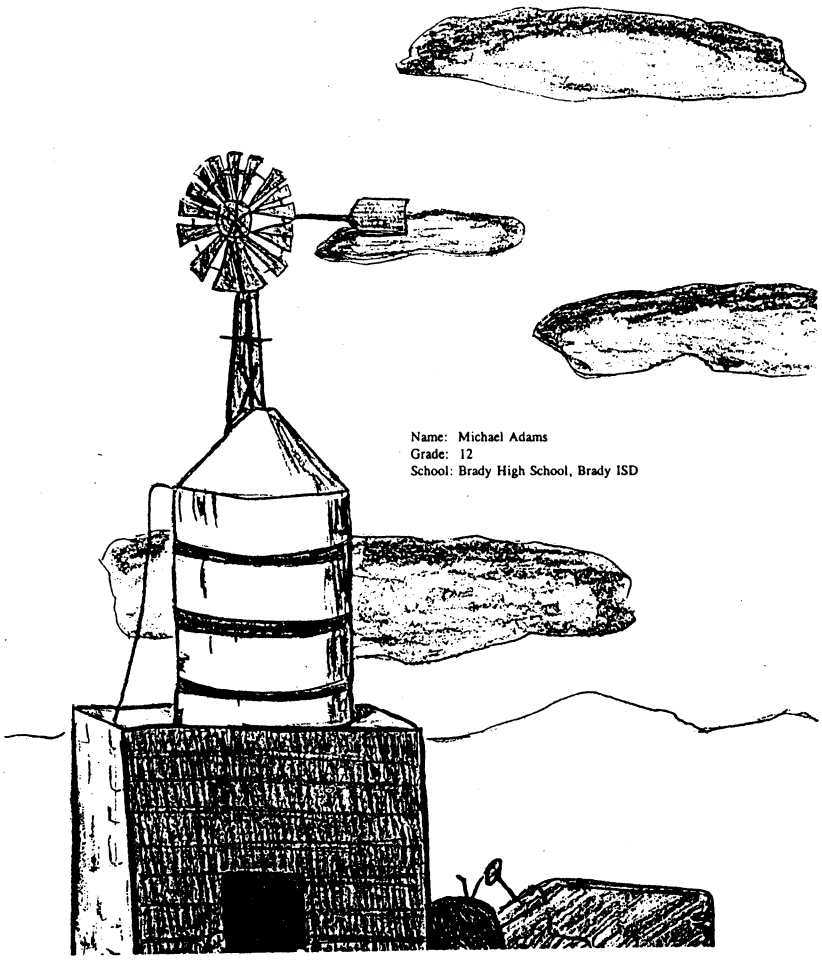
Name: Trey Christy
Grade: 10
School: Brady High School, Brady ISD



Name: Aaron Morris
Grade: 11
School: Brady High School, Brady ISD

Name: David Fekri
Grade: 11
School: Brady High School, Brady ISD





Name: Michael Adams
Grade: 12
School: Brady High School, Brady ISD

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made February 29, 1996

To be a member of the **Trinity River Authority of Texas Board of Directors** for a term to expire March 15, 1999: Walter C. White, Route 4, Box 234-10, Trinity, Texas 75862. Mr. White will be filling the unexpired term of Troy E. Nash of Groveton who is decease.

To be a member of the **Texas Insurance Purchasing Alliance Board of Trustees** for a term to expire February 1, 2001: Mary A. Flores, 3025 Yorkshire Court, Flower Mound, Texas 75028. Mrs. Flores will be replacing Patrice Ellis-Kirk of Dallas whose term expired.

To be a member of the **Judicial Districts Board** for a term to expire December 21, 1998: Alberto R. Gonzales, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Mr. Gonzales will be replacing David A. Talbot, Jr. of Austin whose term expired.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1996: Danny Ray Moss, 1300 Boaz Lane, Haslet, Texas 76052. Mr. Moss will be filling the unexpired term of James Brookes of Amarillo who resigned.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1997: Franz K. Hiebert, Ph.D., 802 Park Boulevard, Austin, Texas 78751. Dr. Hiebert will be replacing Dr. B. L. Harris of College Station whose term expired.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1997: Lois Jordan Koock, P.O. Box 1083, Mason, Texas 76856. Mrs. Koock will be replacing Margarita Sanchez of El Paso whose term expired.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1997: Brenda A. Bradley, 17235 Ash Butte Drive, Houston, Texas 77090. Ms. Bradley will be replacing Jose M. Gil of Austin whose term expired.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1997: Thomas E. Dreiss, 1611 Doe Crest, San Antonio, Texas 78248. Mr. Dreiss will be replacing Hector Guerra, Sr. of Pharr whose term expired.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1997: Michael Thomas Fahy, 12502 McLoughlin Point, Austin, Texas 78726. Mr. Fahy will be replacing Ann McGinley of Austin whose term expired.

To be a member of the **Battleship Texas Advisory Board** for a term to expire February 1, 1997: Quinton Rogers, 1005 West Pinecrest Drive, Marshall, Texas 75670. Mr. Rogers will be replacing David A. Jones of Houston whose term expired.

To be a member of the **Battleship Texas Advisory Board** for a term to expire February 1, 2001: Charles A. Alcorn, 623 Rancho Bauer, Houston, Texas 77079. Mr. Alcorn is being reappointed.

To be a member of the **Battleship Texas Advisory Board** for a term to expire February 1, 1997: Carter Casteel, 285 Rio Drive, New Braunfels, Texas 78130. Mrs. Casteel will be filling the unexpired term of Pauline M. Delaney of Houston who resigned.

To be a member of the **Battleship Texas Advisory Board** for a term to expire February 1, 2001: Thomas J. Perich, 1905 Country Club Drive, Sugarland, Texas 77478. Mr. Perich will be replacing Richard (Burt) Ballanfant of Houston whose term expired.

To be a member of the **Battleship Texas Advisory Board** for a term to expire February 1, 2001: Carol G. Calvert, 2539 FM 55, Waxahachie, Texas 75165. Mrs. Calvert will be replacing George W. Strake, III of Houston whose term expired.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1996: Mary Hartman, 10203 Vernlyn Drive, San Antonio, Texas 77230. Ms. Hartman will be replacing Richard L. Gilbert of Livingston whose term expired.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1996: The Honorable James R. Matz, 3105 Clifford, Harlingen, Texas 78550. Commissioner Matz will be replacing Betty Bauer Brink of Fort Worth whose term expired.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1996: Michael J. Osborne, 909 Twenty Third Street, Austin, Texas 78705. Mr. Osborne will be replacing Robert L. Walters of Dallas/Fort Worth Airport, Texas, whose term expired.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1997: Kathleen Francis Best Bailey, 226 S. Timbercreek Drive, Amarillo, Texas 79118. Mrs. Bailey will be replacing Thomas R. Standish of Houston whose term expired.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1997: Donald W. Niemiec, 4006 Woodcastle Court, Arlington, Texas 76016. Mr. Niemiec will be replacing Kathleen E. Magruder of Dallas who resigned.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1997: Michael A. Roberts, Jr., 401 Westmoreland, Houston, Texas 77006. Mr. Roberts is being reappointed.

To be a member of the **Texas Energy Coordination Council** for a term to expire December 31, 1997: Robert L. Wright, 105 Hollywood Boulevard, Victoria, Texas 77904. Mr. Wright is being appointed to a new position pursuant to House Bill Number 1968, 74th Legislature.

Appointments Made March 8, 1996

To be a member of the **Texas Water Development Board** for a term to expire December 31, 2001: Noe Fernandez, 101 West Westway, McAllen, Texas 78501. Mr. Fernandez is being reappointed.

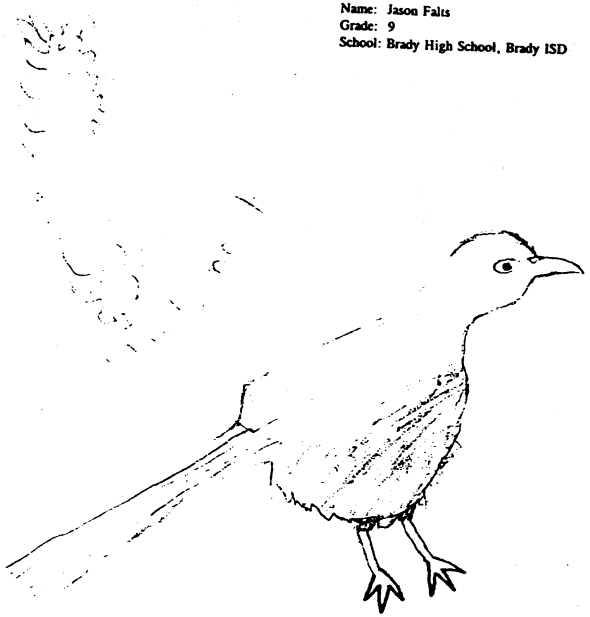
To be a member of the **Texas Water Development Board** for a term to expire December 31, 2001: William B. Madden, 4520 Belfort Avenue, Dallas, a Texas 75205. Mr. Madden is being reappointed.

Issued in Austin, Texas on March 13, 1996.

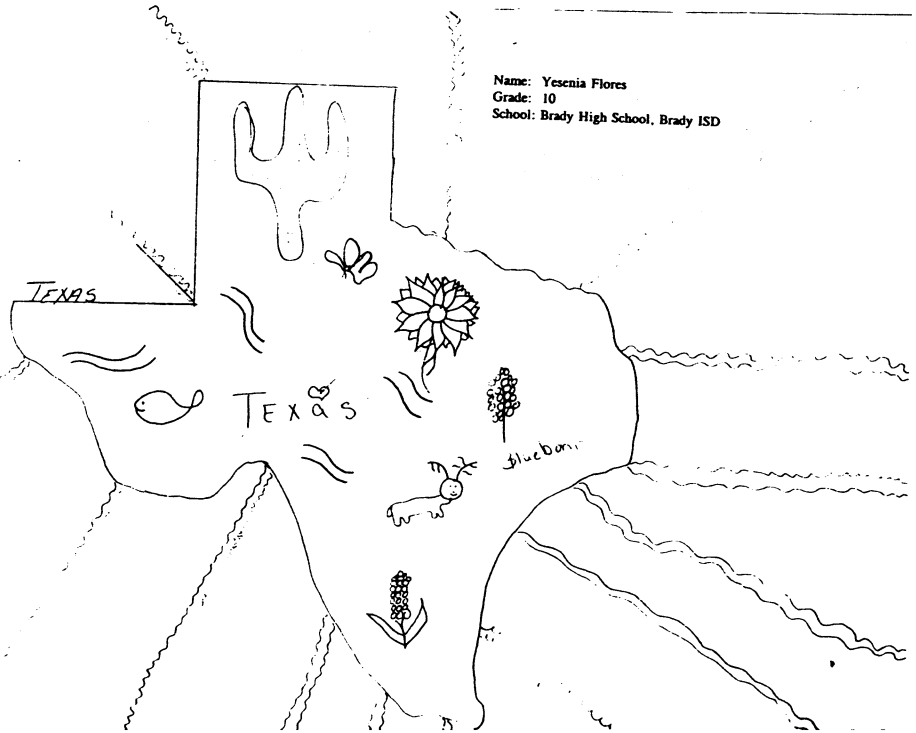
TRD-9603558 George W. Bush
Governor of Texas

♦ ♦ ♦

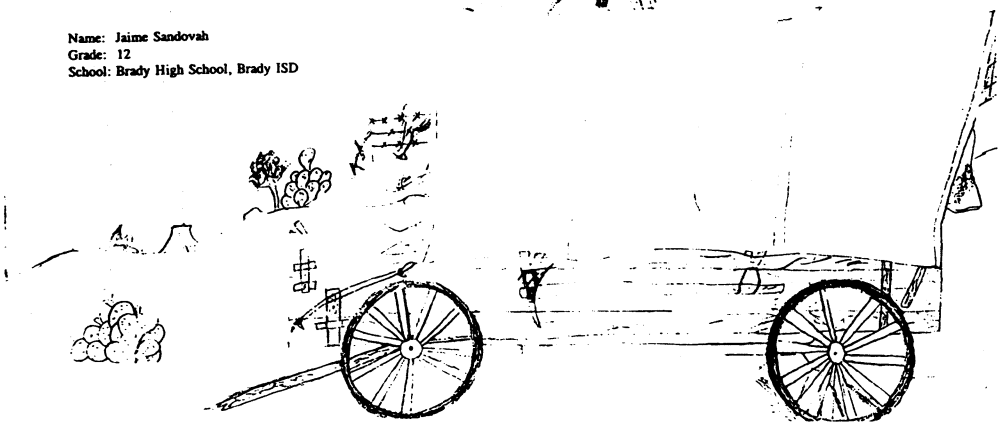
Name: Jason Falts
Grade: 9
School: Brady High School, Brady ISD



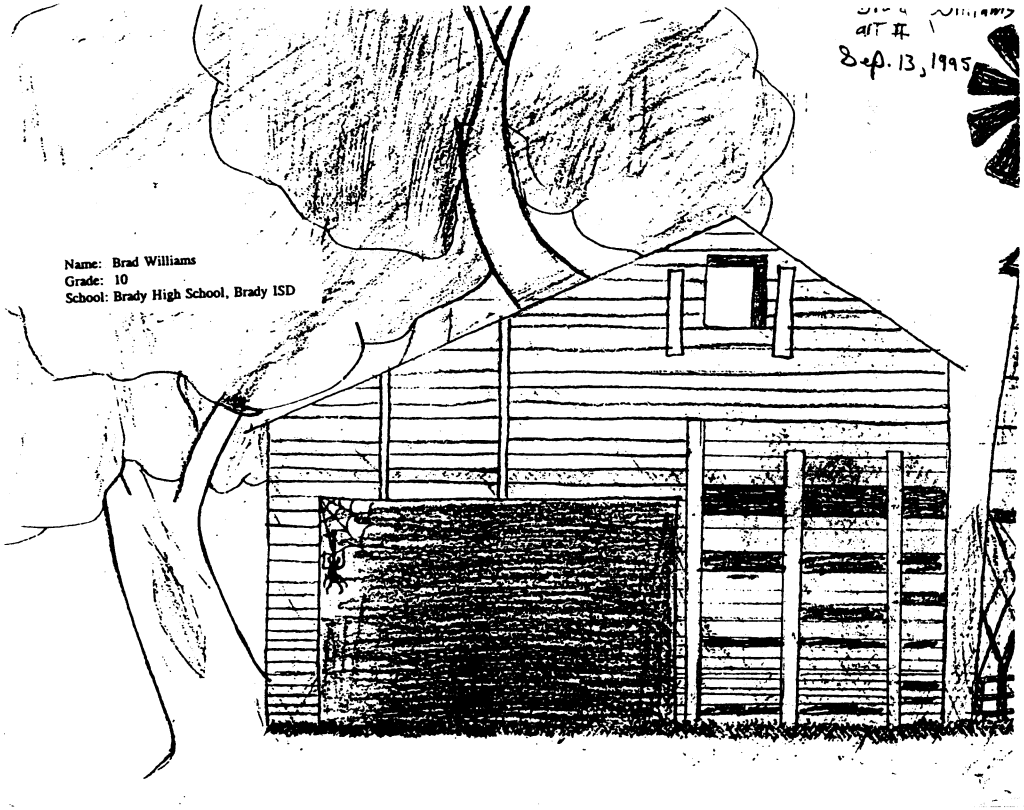
Name: Yesenia Flores
Grade: 10
School: Brady High School, Brady ISD



Name: Jaime Sandovah
Grade: 12
School: Brady High School, Brady ISD



Name: Brad Williams
Grade: 10
School: Brady High School, Brady ISD



Executive Orders

GWB 95-14

Dissolving the Conservatorship of The Texas Commission on Alcohol and Drug Abuse

WHEREAS, on April 12, 1995, in Austin, Texas, the Senate General Investigating Committee and the House General Investigating Committee met in joint session pursuant to Section 301.019, Texas Government Code, to consider the preliminary investigation of the Texas Commission on Alcohol and Drug Abuse; and

WHEREAS, the Senate General Investigating Committee and the House General Investigating Committee voted to recommend to the Legislative Audit Committee that the Texas Commission on Alcohol and Drug Abuse be placed under conservatorship pursuant to Subchapter C, Chapter 2104, Texas Government Code; and

WHEREAS, those proceedings, findings and recommendations were adopted by the Joint General Investigating Committee of the 74th Legislature of the State of Texas and forwarded for consideration to the Legislative Audit Committee and the Governor of the State of Texas; and

WHEREAS, on April 18, 1995, the Legislative Audit Committee found that a condition of gross fiscal mismanagement exists at the Texas Commission on Alcohol and Drug Abuse and that sufficient evidence exists to warrant placing the agency under state conservatorship; and

WHEREAS, on April 26, 1995, pursuant to the above and by authority of the Constitution and laws of the State of Texas, I, George W. Bush, Governor of Texas, ordered the State Conservatorship Board to act as conservator of the Texas Commission on Alcohol and Drug Abuse; and

WHEREAS, on February 26, 1996, the State Conservatorship Board, in open meeting, declared and forwarded such declaration to me that the condition of gross fiscal mismanagement in the Texas Commission on Alcohol and Drug Abuse no longer exists.

NOW, THEREFORE, I, George W. Bush, Governor of Texas, by authority of the Constitution and laws of the State of Texas, do hereby DECLARE that the condition of fiscal mismanagement within the Texas Commission on Alcohol and Drug Abuse no longer exists and I do hereby ORDER the conservatorship of the Texas Commission on Alcohol and Drug Abuse dissolved effective as of February 27, 1996;

AND I DO FURTHER ORDER that, not later than November 1, 1996, the transitional board members of the Texas Commission on Alcohol and Drug Abuse, newly constituted pursuant to Article 26 of Chapter 876 of the 74th Legislature, Regular Session, and the State Conservatorship Board file joint recommendations with the presiding officer of each house of the legislature for consideration by the 75th Legislature relating to the governance of the commission.

Issued in Austin, Texas on February 26, 1996.

TRD-9603559 George W. Bush
Governor of Texas

GWB-96-1

Relating to the Texas Motorist's Choice Program

WHEREAS, the Legislature of the State of Texas heretofore has enacted the Texas Clean Air Act (the Act), codified at Chapter 382 of the Texas Health and Safety Code;

WHEREAS, section 382.037(a-1) of the Act authorizes the Governor to determine, after appropriate negotiation with the United States Environmental Protection Agency, the type of vehicle emissions inspection and maintenance program for the State;

WHEREAS, section 382.037(a-1) authorizes the Governor to direct the Texas Natural Resource Conservation Commission to develop and implement the vehicle emissions inspection and maintenance program that he determines to be necessary for the State;

WHEREAS, section 382.037(a-1) authorizes the Governor to direct the adoption of a particular testing technology or system or a particular combination of technologies, systems, or technologies and systems, and to adjust appropriate fees as necessary;

WHEREAS, section 382.037(a-1) authorizes the Governor to direct the exemption of a county from, or the inclusion of a county in, a vehicle emissions inspection and maintenance program;

WHEREAS, section 382.037(a-1) provides that the program authorized under section 382.0371 is suspended upon implementation of the new vehicle emissions inspection and maintenance program;

NOW, THEREFORE, I, George W. Bush, Governor of Texas, have determined, after appropriate negotiation with the United States Environmental Protection Agency (EPA), that the Texas Motorist's Choice Program is necessary for the State, and I hereby direct the Texas Natural Resource Conservation Commission (Commission) to develop and implement the Texas Motorist's Choice Program, approvable by EPA, as described below:

All gasoline-fueled light-duty vehicles and light- and heavy-duty trucks required to be registered in, and primarily operated in, Dallas, Tarrant, El Paso, and Harris Counties that are between two and 24 years old are subject to the inspection and maintenance program requirements. Vehicles operated on federal facilities in these counties and vehicles exempt from registration and primarily operated in these counties are subject to the Program requirements as well.

The Commission shall develop a remote sensing program that identifies gross-polluting vehicles which shall be subject to inspection and maintenance requirements upon detection by remote sensing equipment. The remote sensing program shall be implemented in counties identified by Commission rule and in cooperation with the Department of Public Safety (Department).

Motorists may choose a two-speed idle or a loaded/transient mode test at any test-and-repair or a test-only facility certified by the State,

Upon proof of eligibility and payment of a reasonable fee, as established by Commission rule, a motorist may qualify for a waiver from certain inspection and maintenance requirements.

The Commission shall develop test equipment criteria and shall set emission test procedures and passing criteria.

The Commission shall collect and report inspection and maintenance data to EPA, including inspection results, inspection facility data, challenge test and waiver data, vehicle repair data, audit data, enforcement data, data regarding vehicles operated on federal facilities, vehicle registration data, and any other data required by EPA. The Commission shall compare inspection results with registration data for the purpose of enforcing Program requirements.

The Commission shall, in cooperation with the Texas Department of Transportation, develop a program providing for the denial of registration of vehicles that have not complied with Program requirements.

The Commission shall, in cooperation with the Texas Department of Transportation, develop a program providing that vehicles between six and 24 years old must pass an inspection within 60 days of resale and prior to transfer of title to non-family member consumers in Dallas, Tarrant, or Harris Counties.

FURTHER, I hereby direct the Commission to implement the following Program components in order to provide the maximum convenience and consumer protection for motorists:

The Commission shall set an inspection fee that will include State oversight costs.

The Commission shall develop, implement, and oversee a public information campaign that includes the remote sensing and test on resale components of the Program.

The Commission shall adopt a resolution, in accordance with section 382. 037(d) of the Act, which provides that the Department shall implement a system which requires, as a condition of obtaining a safety inspection certificate for a vehicle subject to the Program, that the vehicle be inspected annually with a two-speed idle test or biennially with a loaded/transient mode test, as required by the Texas air quality State Implementation Plan.

FURTHER, I hereby direct the Commission to enter into an agreement with the Department to provide for the establishment of the following Program components:

In accordance with section 382.038(a) of the Act, the Department shall adopt by rule standards and procedures for implementing the inspection and maintenance program designed by the Commission and for licensing inspection facilities, including the establishment of a penalty structure that will meet the requirements of federal regulations provided at 40 C.F.R. §51.364.

In cooperation with the Commission, the Department shall develop, implement, and oversee a public information campaign pertaining to emissions inspection and repair requirements for vehicles subject to the Program, and the recognized repair technician component of the Program, and shall be responsible for the resolution of consumer complaints and disputes related to the inspection facilities, inspectors, or results.

The Department shall issue waivers in accordance with the Commission's criteria adopted by rule.

The Department shall, in accordance with section 382.038(e) of the Act, develop and implement procedures whereby a motorist may conveniently challenge the validity of the results of an inspection, in order to ensure quality control of the inspection facilities and consumer protection.

The Department shall recognize automotive repair facilities and technicians, in accordance with criteria adopted by the Commission, in order to promote increased consumer protection.

AND ADDITIONALLY, WHEREAS, legislation is desirable to enhance the Texas Motorist's Choice Program,

NOW, THEREFORE, I hereby declare my intent to support legislation in the 75th Legislative session that will authorize the implementation of the following Program components: (1) the denial of re-registration of vehicles that have not complied with Program requirements; (2) the establishment of a class C misdemeanor penalty for operating a gross-polluting vehicle in a nonattainment area; and (3) the requirement for an inspection within 60 days of resale and prior to transfer of title to non-family member consumers residing in Dallas, Tarrant, or Harris Counties.

This executive order shall remain in effect until modified, amended, or rescinded by me.

Issued in Austin, Texas on February 27, 1996.

TRD-9603658 George W. Bush
Governor of Texas

GWB 96-2

Relating to the March 12, 1996 and the April 9, 1996 Primary and Runoff Elections

WHEREAS, a significant number of United States military and civilian personnel are stationed or living overseas, including those who are presently deployed in support of Operation of Joint Endeavor in Bosnia; and

WHEREAS, the Secretary of State, Chief Election Officer of Texas, has been contacted by the Presidential Designee under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §1973ff (the "Act"), concerning the short period of time to mail ballots to overseas voters for the March 12, 1996 and April 9, 1996 Primary and Runoff Elections;

WHEREAS, the Presidential Designee has suggested, pursuant to the Act, that overseas voters vote by special Federal write-in absentee ballot procedures; and

WHEREAS, the Secretary of State has informed me that the special Federal write-in absentee ballot procedures will allow overseas voters to cast ballots in a timely fashion in the March 12, 1996 and April 9, 1996 Primary and Runoff Elections;

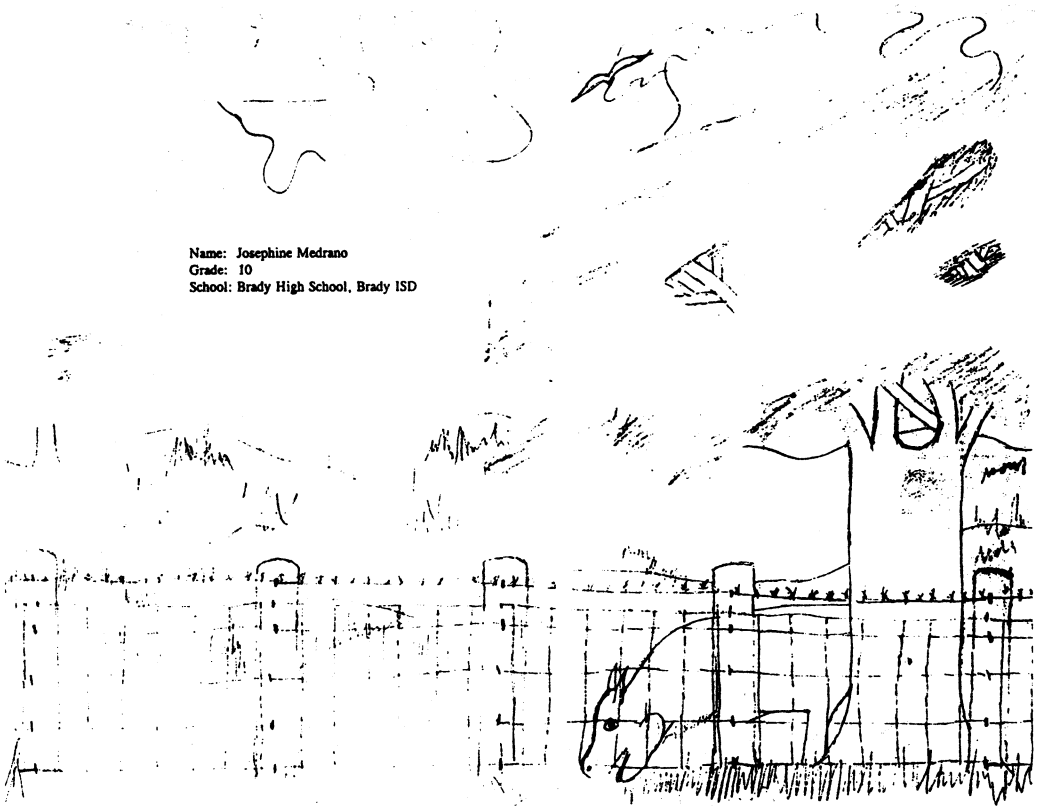
NOW, THEREFORE, I, GEORGE W. BUSH, GOVERNOR OF TEXAS, by virtue of the power vested in me, do hereby order the Secretary of State to cooperate with the Presidential Designee to ensure that citizens of Texas who are currently living or stationed overseas are able to vote in the March 12, 1996 and April 9, 1996 Primary and Runoff Elections;

The Secretary of State is hereby directed to notify the appropriate county officials and to prescribe such rules, regulations, or directives as necessary to ensure the proper acceptance of ballots of citizens covered by the Act for the March 12, 1996 and April 9, 1996 Primary and Runoff Elections.

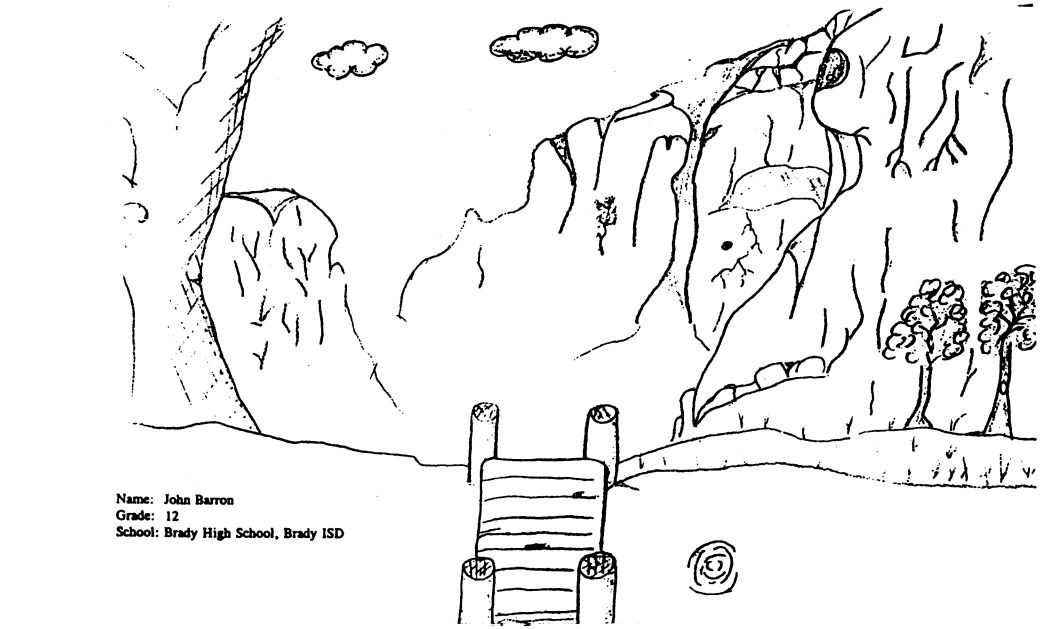
Issued in Austin, Texas on March 6, 1996.

TRD-9603657 George W. Bush
Governor of Texas

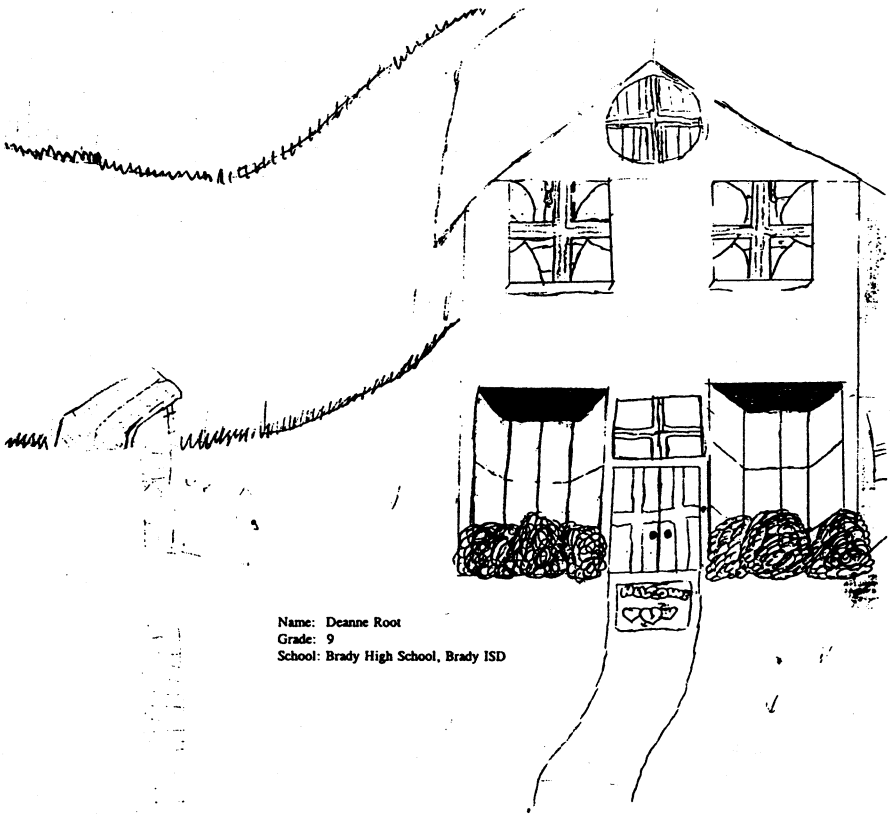
♦ ♦ ♦



Name: Josephine Medrano
Grade: 10
School: Brady High School, Brady ISD

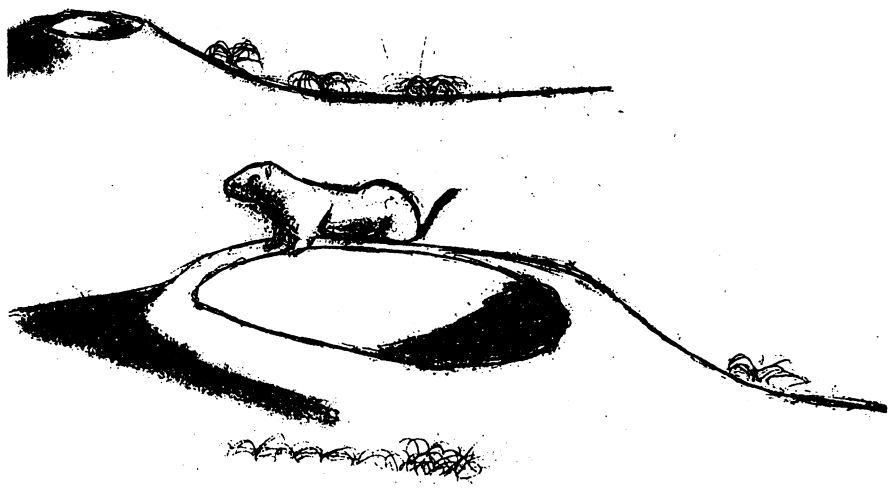


Name: John Barron
Grade: 12
School: Brady High School, Brady ISD



Name: Deanne Root
Grade: 9
School: Brady High School, Brady ISD

Name: Roy Sellers
Grade: 11
School: Brady High School, Brady ISD



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 13. CULTURAL RESOURCES
Part II. Texas Historical Commission
Chapter 26. Practice and Procedure

- **13 TAC §§26.2, 26.5, 26.6, 26.15, 26.17, 26.18, 26.20-26.22, 26.24, 26.25, 26.27**

The Texas Historical Commission proposes amendments to Chapter 26 of the Rules of Practice and Procedure for, and concerning; §§26.2 (Scope), 26.5 (Definitions), 26.6 (Antiquities Advisory Board), 26.15 (Memoranda of Understanding and Agreement), 26.17 (Issuance of Permits), 26.18 (Permit Monitoring), 26.20 (Archeological Permit Categories), 26.21 (Application for Archeological Permit), 26.22 (Historic Structures Permits), 26.24 (Reports Relating to Archeological Permits), 26.25 (Reports Relating to Historic Structures Permits), and 26.27 (Disposition of Archeological Artifacts and Data). These changes are primarily needed to adapt the rules to changes made to the Antiquities Code of Texas by the 74th Legislature of Texas. The proposed amendments will assist in conforming the Rules of Practice and Procedure to the 1995 revisions to the Antiquities Code of Texas. These amendments include the elimination of the term Texas Antiquities Committee, clarification of the responsibilities and legal limitations of the Antiquities Advisory Board, responsibilities of investigative firms and principal investigators, and the creation of a new permit category that applies to state agencies or political subdivisions of the State that have memoranda of understanding with the Texas Historical Commission.

Dr. James E. Bruseth, Deputy State Historic Preservation Officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Bruseth 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 efficient regulations related to the protection of significant cultural resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dr. James E. Bruseth, Deputy State Historic Preservation Officer, Texas Historical Commission, Department of Antiquities Protection, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*. If there are questions, please call Mark H. Denton, at (512) 463-5711.

The amendments are proposed under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 365, 74th Legislature, 1995), §191.052, which provides the Texas Historical Commission with authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

§26.2. Scope. State archeological landmarks include all sites, objects, buildings, pre-twentieth century shipwrecks, and locations of historical, archeological, educational, or scientific interest including, but not limited to: prehistoric and historic American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, prehistory, history, natural history, government, or culture in, on, or under any of the lands of the State of Texas, including the tidelands, submerged lands, and the bed of the sea within the jurisdiction of the State of Texas. Section 191.092 of the Code provides that historical and archeological sites on lands belonging to any county, city, or other political subdivision of the State of Texas are state archeological landmarks and may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from the **committee** [Texas Antiquities Committee]. Also protected under the Antiquities Code of Texas are specially designated archeological landmarks on private property, as well as all American Indian or aboriginal paintings, hieroglyphic, or other marks or carvings on rock or elsewhere which pertain to early American Indian or aboriginal habitation of the country. The **committee** [Antiquities Committee] is further empowered to provide for a system of permits and contracts for salvage of treasures embedded in the earth and the excavation or study of archeological and historical sites and objects.

§26.5. Definitions. The following words and terms, when used in this chapter and the Antiquities Code of Texas, shall have the following meanings unless the context clearly states otherwise.

[Texas Antiquities Committee–The nine member board, or its staff, created by the Antiquities Code of Texas Natural Resources Code, Title 9, Chapter 191, to determine the site of, designate, and remove from such designation (if determined to be of no further historical, archeological, educational, or scientific value) State Archeological Landmarks; to contract or otherwise provide for discovery and salvage operations; to consider the requests for and issue permits provided for; and to protect and preserve the cultural resources of Texas.]

§26.6. Antiquities Advisory Board. As provided for by the 74th Texas Legislature, within §442.005(r) of the **Government** [Administrative] Code of Texas (concerning the statutes of the Texas Historical Commission), the committee is authorized to create an Antiquities Advisory Board (hereafter referred to as the board). The board will be chaired by the Governor-appointed professional archeologist member of the Texas Historical Commission, and will make recommendations to the committee on issues related to the Antiquities Code of Texas. The Vice Chair will be elected each year by the board from within their membership. The board will also be composed of the following six membership positions: the representative of the Texas Archeological Society, the president of the Council of Texas Archeologists, a state agency archeologist, a contract archeologist, the Governor-appointed professional architect member of the Texas Historical Commission, and the Governor-appointed professional historian member of the Texas Historical Commission. The

contract archeologist will be appointed by the committee, and will serve one three-year term that expires on February 1. The board will provide nominations to the committee for the selection of the contract archeologist position. The state agency archeologist will serve a one year term that expires February 1, and the appointment must rotate between the state agencies that have staff archeologists. If the Governor does not appoint a professional archeologist, architect, and historian to the Texas Historical Commission, the committee will appoint such individuals to the board and they will serve for a term of two years or until replaced by a Governor-appointee(s) . Specific duties of the board include providing recommendations on proposed State Archeological Landmark designations, and in resolving disputes regarding the issuance of Texas Antiquities Permits. The board shall convene immediately prior to each quarterly meeting of the committee unless otherwise requested by the board chair, and board meetings shall conform to the Texas Open Meetings Act, Chapter **551 of the Texas Government Code** [271, Acts of the 60th Legislature, 1967, as amended (Texas Civil Statutes, Article 6252-17)], and the Administrative Procedure [and Texas Register] Act, **Texas Government Code 2001** [as amended (Texas Civil Statutes, Article 6252-13a)]. The recommendations of the board will be brought to the committee by the board chair and/or one of the other committee members who serves on the board, and whose area of expertise is related to the subject under consideration. **The board will accomplish their specific duties in the following manner.**

(1) Consider and discuss all proposed State Archeological Landmark designations, and any non-adjudicative issues or dispute related to Antiquities Permit issuance that are brought before them by the committee, Department of Antiquities Protection or Division of Architecture staff, members of the board, or the public.

(2) Function as preliminary mediators for the committee unless otherwise directed by the committee, or refused by a complainant(s).

(3) Vote on final recommendations related to appropriate issues of concern, and present those recommendations to the committee.

(4) Conflicts of interest.

(A) Any member of the board that has a conflict of interest related to an issue that comes before the board shall recuse himself/herself from voting on that issue. A member of the Board who has a conflict of interest may respond to questions directed to them by seated members of the Board. Prior to any deliberations concerning the issue in which a member of the Board has a conflict of interest, the member with a conflict shall announce, for the record, that such a conflict exists and physically absent and recuse himself/herself from the decision-making process and neither vote directly, in absentia, nor by proxy in that matter. Board minutes must indicate which member recused himself/herself and the reason(s) for the recusal.

(B) For the purpose of these rules a conflict of interest would result if a vote by a member of the Board is likely to result in a financial benefit or personal gain for the following individuals:

***(i)*the member of the board:**

***(ii)*any person of the member's immediate family, which includes spouse and any minor children; or**

***(iii)*a business partner of the member; or**

***(iv)* any organization for profit in which the member, or any person of clauses (ii) and (iii) of this subparagraph, that is serving or is about to serve as an officer, director, trustee, partner, or employee. A financial benefit includes, but is not limited to, grant money, contract, subcontract, royalty, commission, contingency, brokerage fee, gratuity, favor, or any other things of real or potential value.**

(5) The Board shall follow parliamentary authority according to Robert's Rules of Order, Newly Revised, except where specifically provided for otherwise in these rules.

§26.15. Memoranda of Understanding and Agreement.

(a) (No change.)

(b) Primary Considerations and Stipulations. All agreements are subject to §§26.17, 26.20, and 26.21 of this title (relating to Issuance of Permits, Archeological Permit Categories, and Application for Archeological Permit). Primary considerations in the development of permit specific memoranda shall include: the significance of the cultural resource(s); <etb>the [of] nature of the impact of the project on the cultural resource(s); and fiscally appropriate and cost-effective means to mitigate the effect of the project on the cultural resource(s). The memoranda will stipulate basic information related to the data recovery program for each permitted project, including, but not limited to: the significance of the area to be excavated; the methods and techniques to be employed; the coordination of the excavation with project construction schedules; and the estimated budget for all phases of work related to the investigation, including artifact analysis and report production. The committee may also require a performance bond to be posted prior to issuance of an antiquities permit. Memoranda of Understanding between the **committee** [Texas Antiquities Committee] and **other public agencies** [the Texas Department of Transportation and the Texas Water Development Board] follow.

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

§26.17. Issuance of Permits.

(a) (No change.)

(b) Special regulations. When a permit is issued, it will contain all special regulations governing that particular investigation; it must be signed by the **directors of either the Department of Antiquities Protection or Division of Architecture of the Texas Historical Commission** [Chairman] or **their** [his] designated representative.

(c) Permit period. **No permit will be issued for less than one year, nor more than ten years, but** [Permits] may be issued for any length of time **within this time frame,** as deemed necessary by the committee in consultation with the principal investigator, sponsor, and permittee.

(d) Transferal of permits. No permit issued by the **committee** [Texas Antiquities Committee] will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual **without the consent of the committee.**

(e) State site survey forms. Standard state site survey forms for all sites recorded as a result of activities undertaken through an Antiquities Permit will be completed and submitted to the Texas **Archeological Research Laboratory at the University of Texas in Austin,** [Antiquities Committee, P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276] upon the completion of field work.

(f) Permit expiration.

(1) (No change.)

(2) Expiration extension. Permits may be extended once for **no less than one year, and no more than ten years** [any length of time] as deemed necessary by the committee, in consultation with the principal investigator, sponsor, investigative firm, or permittee.

(g) Expiration **responsibilities** [exemption]. **Investigative**

firms and permittees must insure that a principal investigator is assigned to a permit at all times, regardless of whether the permit is active or has expired. Both the principal investigator and investigative firm should insure that a new principal investigator is assigned to the permit, if for any reason the original principal investigator must leave the project. The assignment of a new principal investigator must be approved by the committee, and agreed to by both the original and the new (proposed) principal investigator. [Permits expired as of January 1, 1993, are automatically extended to January 1, 1994.]

(h) (No change.)

(i) Permit cancellation.

(1)-(4) (No change.)

§26.18. Permit Monitoring. Any member or agent of the **committee** [Texas Antiquities Committee] and any officer in charge of land owned or controlled by the State of Texas may, at any time, visit the area or site being investigated under permit. Such a representative of the state may examine the permit as well as the field records, materials, and specimens being recovered.

§26.20. Archeological Permit Categories. Several categories of [or] permits oriented toward specific types of investigation are issued by the **committee** [Antiquities Committee].

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

(4) Monitoring. **Unless otherwise specifically authorized by the committee, this** [This] permit category is for the purpose of having a professional archeologist or architect on-site to observe construction activities that may or will damage cultural resources, and for them to report findings and impacts to sites, to the Committee. Monitoring may be conducted during or after other phases of archeological investigation and may not involve the need for a separate permit. However, if monitoring is the only investigation deemed necessary relative to a construction activity, then a monitoring permit will be required. If previously unrecorded and significant archeological deposits are recorded during a monitoring investigation, then construction activities in the immediate area of the find must stopand the principal investigator shall notify the Department of Antiquities Protection within 24 hours. Specific requirements of monitoring are included in the permit.

(5)-(11) (No change.)

(12) Annual permit. A public agency, or institution, may be granted an annual permit, allowing for survey, recording, study, protection, stabilization, or conservation projects. The annual permit will be issued for a specific period of time and must be arranged under the auspices of a Memorandum of Understanding (MOU). The MOU will be developed by the public agency or institution, and the Department of Antiquities Protection, to govern the survey, recording, study, protection, stabilization, and conservation projects related to designated State Archeological Landmarks, or potential landmarks, as defined in this chapter. The MOU will adhere to, but not be limited to, the committee's rules and regulations. In most cases the standards described in the MOU will be administered by a qualified archeologist on the staff of, or contracted by, that public agency or institution (See §26.5 of this title, relating to Definitions). The committee will be informed through an annual report of all projects completed under the guidance of the MOU, with details adequate to confirm compliance with the annual permit.

§26.21. Application for Archeological Permit.

(a) (No change.)

(b) Eligibility for application. Permits to conduct investigations of any nature on State Archeological Landmarks or potential landmarks, **on** [or] lands owned or controlled by agencies or political subdivisions of the state will be issued exclusively by the **committee** [Texas Antiquities Committee] under the conditions provided in the Antiquities Code and in these rules and regulations.

(1) Permits will be issued by the **committee** [Texas Antiquities Committee] to scientific and educational institutions, nonprofit corporations and organizations, investigative firms, and governmental agencies which have demonstrated their ability to carry out proper archeological investigations through their own staffs, including one or more professional archeologists who will supervise the project, or through a contract with a professional archeologist. Permits may also be issued to individuals and private corporations who:

(A) (No change.)

(B) if required by the committee or the terms or conditions of a Memorandum of Understanding, provide proof that adequate funds, equipment, facilities, and personnel are available to properly conduct the investigation as proposed to the **committee** [Antiquities Committee], and to report the results. The committee may require a performance bond to be posted as part of the application process.

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

(c) Application for permit. Permit application forms may be obtained from the **Texas Historical Commission** [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276. Any institution, corporation, organization, museum, investigative firm, or individual desiring a permit for investigations must file a completed application with the committee at least one month prior to the proposed beginning date of the project. Special circumstances may require that a permit be issued on short notice when a site is threatened with immediate destruction. When a permit is issued for emergency salvage of a site threatened with destruction, the same rules and regulations apply as with all permits. The permit application should include:

(1)-(8) (No change.)

(d) (No change.)

§26.22. Historic Structures Permits.

(a) Permit Application Procedure.

(1) (No change.)

(2) Notification. The **Texas Historical Commission** [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276 must be notified of any work to a State Archeological Landmark. Such notice should be made early enough to allow adequate time to prepare the formal application as described in paragraph (6) of this subsection. The notification must include a brief written description of the project and at least one photograph of the structure or affected portion of that structure. The committee staff will provide the applicant with the appropriate permit application form and notify him/her of the necessary attachments or application reports within 30 days of receipt of notification.

(3)-(5) (No change.)

(6) Formal application. The applicant must be an historic architect who has submitted a resume and must submit the completed application form along with any required attachments or application reports at least 60 days prior to commencement of work or issuance of bid documents, whichever comes first. All applications must be submitted on forms approved by and available from

the **Texas Historical Commission** [Antiquities Committee] P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276.

(7)-(10) (No change.)

(11) Issuance of permit. Contract documents should not be issued for bidding purposes before a permit has been issued by the **committee** [Texas Antiquities Committee]. If no response has been made by the committee within 60 days of receipt of any permit application, the permit shall be considered to be granted.

(b) Permit categories for historic structures.

(1) (No change.)

(2) Preservation. Any work done to a structure on its original or present site will be permitted and reviewed according to one or more of the following treatments. The treatments are discussed in the committee standards for historic preservation which are available in printed form from the Texas **Historical Commission** [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711 (subsection (c) of this section).

(A) -(F) (No change.)

(3) **Annual** [Blanket] permit. **A public** [An] agency, or institution [or political subdivision] may be granted **an annual** [a blanket] permit by the committee, allowing **for reconnaissance, survey, study,** protection, stabilization, or conservation projects. The **annual** [blanket] permit will be issued for a specific period of time and **must be arranged for under the auspices of a Memorandum of Understanding.** [will become effective when signed by the committee chairman. Upon expiration of the blanket permit, a Committee review of the investigations completed is required prior to renewal of the blanket permit.] The preservation plan for historic structures or **MOU** [Memorandum of Agreement (MOA)] will be developed by the **public** agency, or institution, [or political subdivision] and approved by the committee to govern protection, stabilization, and conservation projects on designated State Archeological Landmarks owned by that particular public **agency** [entity]. The preservation plan or **MOU** [MOA] will adhere to, but not be limited to, the committee's standards for historic preservation, subsection (c) of this section, and the principles described in the "Preservation Briefs" series published by the Technical Preservation Services, Preservation Assistance Division, National Park Service, United States Department of the Interior. The standards described in the preservation plan or **MOU** [MOA] will be administered by a qualified architect on the staff of, or contracted by, that agency, institution or political subdivision. See §26.5 of this title, (relating to Definitions). The committee will be informed of all projects completed under the guidance of the preservation manual and provided with details adequate to confirm compliance with the **annual** [blanket] permit.

(4)-(6) (No change.)

(c) Standards for historic preservation. The Secretary of the Interior's Standards for Historic Preservation (1983) are hereby adopted by reference by the **committee** [Texas Antiquities Committee] and shall be considered to be a part of these rules for practice and procedure. Copies of these standards, referred to in this document as the committee standards, are available in printed form from the Texas **Historical Commission** [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276. Failure to comply with these standards, failure to complete any required reports, or failure to complete a project according to the approved plans, specifications, addenda, or other terms of a permit shall be considered grounds for refusing the services of any architect, contractor, or craftsman for future permits.

§26.24. Reports Relating to Archeological Permits.

(a) A report should meet the Council of Texas Archeologists (CTA) Guidelines for Cultural Resources Management Full Reports, available from the Texas **Historical Commission** [Antiquities Committee], P.O. Box 12276, Austin, Texas 78711 or from the Council of Texas Archeologists.

(1) The report must also contain:

(A) a title page that includes: the name of the investigation project, the name of the principal investigator and investigative firm, and the Antiquities Permit number;

(B) specific recommendations of which sites are eligible for designation to State Archeological Landmark status; which sites appear to be eligible for inclusion in the National Register of Historic Places; and which sites will be adversely affected by a proposed project.

(2) Two copies of the draft permit report must be submitted to the Texas **Historical Commission** [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276 for review prior to the production of the final report. The draft report does not have to be bound, but should contain all of the basic content elements required for the final report. The final report must also contain any revisions in the draft that are required in writing by the committee.

(3) Upon completion of a permitted project, the permittee or principal investigator, investigative firm, state agency or political subdivision shall furnish the **committee** [Texas Antiquities Committee, P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276] with 20 copies of the report at no charge to the committee, a completed Department of Antiquities Protection Abstract Form, and proof of the accession of the collection and related field notes.

(b) (No change.)

§26.25. Reports Relating to Historic Structures Permits.

(a) (No change.)

(b) Project reports. When the situation indicates it is advisable, one or more of the following project reports may be required to be compiled during the course of a project and submitted along with the completion report. All project reports must be compiled under the supervision of professionally qualified individuals as specified in §26.5 of this title (relating to Definitions).

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

(4) Completion report.

(A)-(D) (No change.)

(E) Report submittal. Submit all required copies with original photographic documentation; Xerox copies are not acceptable. All completion reports must be submitted unbound. Submit copies to Texas **Historical Commission** [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276.

§26.27. Disposition of Archeological Artifacts and Data.

(a) (No change.)

(b) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and

standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the **committee** [Texas Antiquities Committee] are contained in the Texas Natural Resources Code of 1977, Title 9, Chapter 191, §191.052(b). The **committee** [Antiquities Committee] will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the policy of the **committee** [Antiquities Committee] that such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks.

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

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the **committee** [Antiquities Committee] and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the **committee** [Antiquities Committee]. A variety of special, short-term exhibits may also be authorized by the **committee** [Antiquities Committee].

(d) Access to antiquities for research purposes. Antiquities retained under direct supervision of the committee will be available under the following conditions:

(1) Request for access to collections must be made in writing to the Texas **Historical Commission** [Antiquities Committee], P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276, indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in non-permit reporting. A copy of the report will be provided to the **committee** [Texas Antiquities Committee].

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the **committee** [Texas Antiquities Committee].

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Archeological Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the **committee** [Texas Antiquities Committee].

(5)-(7) (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 March 11, 1996.

TRD-9603448 Mark H. Denton
Staff Archeologist
Texas Historical Commission

Earliest possible date of adoption: April 22, 1996

For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

The Railroad Commission of Texas proposes amendments to §§9.2, 9.953-9. 956, relating to definitions; specifications for approved low pressure piping materials; corrosion protection; piping layout; and joining methods. The commission proposes these actions to allow the use of corrugated stainless steel tubing (CSST) for LP-gas vapor service inside a building. CSST is recognized and accepted by the National Fire Protection Association (in NFPA Pamphlet 54, *National Fuel Gas Code*), the Southern Building Code Congress International, the Council of American Building Officials, the American and Canadian Gas Associations, and other building codes. Its flexibility means it will bend instead of break when a building settles over time or is subject to earthquakes or high winds. Its flexibility also means fewer joints are used during installation, which decreases the potential for leaks.

Proposed amendment in §9.2 includes a new definition for CSST and amendment of the definition for low pressure piping. Section 9.953 describes the types of material that may be used in low pressure piping and lists the standards to which the material must conform. The proposed amendment in new subsection (a)(1)(D) adds the specifications for CSST.

Section 9.954 and §9.955 describe the protection against corrosion which must be used when piping is installed underground and the locations inside a building where piping may be installed. The proposed amendments state that CSST shall be installed underground only as specified by the manufacturer and shall be protected in a manner specified by the manufacturer.

Section 9.956 specifies joining methods that must be used. Proposed amendment to §9.956 includes a new subsection (d), which states that CSST shall only be joined by methods approved by ANSI/AGA LC-1, *Interior Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing*. Subsection (f) also has a proposed new sentence requiring licensees to keep written proof of any certifications for CSST installation and repair.

Thomas D. Petru, assistant director, Liquefied Petroleum Gas Section, Gas Services Division, has determined that for each year of the first five years the sections as proposed will be in effect there will be no fiscal implications for state or local governments.

Mr. Petru also has determined that for each year of the first five years the sections as proposed will be in effect the public benefit anticipated as a result of enforcing the sections as proposed will be an additional product for use in buildings to provide LP-gas vapor service. There is no anticipated economic cost to small businesses and to individuals required to comply; participation will be voluntary and some costs may in fact be lowered due to decreased labor costs for installation.

Comments on the proposals may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1494. For additional information contact Thomas D. Petru at (512) 463-6949.

Subchapter A. General Applicability and Requirements

- **16 TAC §9.2**

The amendment is proposed under the Texas Natural Resources Code, §113. 051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following are the statutes, articles, or codes affected by the proposed amendments: §§9.2, 9.953, 9.954, 9.955, and 9.956–Texas Natural Resources Code, §113.051.

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

Corrugated stainless steel tubing–A type of tubing which is primarily used inside a building for LP-gas vapor service only. The tubing shall have a maximum operating pressure of 5 psig, and shall be one inch or less in diameter.

Low pressure gas piping **or tubing**–Piping **or tubing** used for conveying LP-gas liquid or vapor at pressures of 50 psig or less, **except for corrugated stainless steel tubing, which shall be used for vapor service only and shall not exceed a maximum operating pressure of 5 psig.**

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 March 12, 1996.

TRD-9603503 Mary Ross McDonald
Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: April 22, 1996

For further information, please call: (512) 463-7008

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Subchapter L. LP-Gas Piping and Piping Systems

• 16 TAC §§9.953-9.956

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

*§9.953. Specifications for Approved Low Pressure Piping **or Tubing** Materials.*

(a) All pipe, tubing, and fittings shall:

(1) be made of one or more of the following materials:

(A) (No change.)

(B) seamless copper or brass tubing or pipe; [or]

(C) polyethylene pipe or tubing; **or** [and]

(D) corrugated stainless steel tubing; and

(2) have a minimum design working pressure of 125 psi, except for polyethylene pipe or tubing, which shall have a minimum design working pressure of 60 psi, **and corrugated stainless steel tubing, which shall have a minimum design working pressure of 250 psig.**

(b)-(i) (No change.)

*§9.954. **Underground** Corrosion Protection.* All metallic piping installed underground, except copper, shall be protected against corrosion by the application of a commercially available, nonmetallic, corrosion-resistant material specifically designed for this purpose. Exceptions can be granted to this requirement when adequate proof is submitted to the commission that the soil is noncorrosive. **Corrugated stainless steel tubing shall be installed underground only as specified by the manufacturer.**

§9.955. Piping Layout.

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

(c) Gas pipe or tubing may be installed in walls or partitions using the minimum number of connections. Bushings, ground joint unions, or swing joints shall not be used within a wall. When a recessed wall furnace is installed, the test specified in §9.963 of this title (relating to Pressure Test of Piping) shall be used. Tubing installed inside walls or partitions, rather than through them, shall be protected against physical damage by means of a substantial covering, such as pipe. Pipe or tubing shall not be installed in the same stud space with electrical junction boxes or switches. **Corrugated stainless steel tubing shall be installed, repaired and maintained in accordance with the manufacturer's instructions and the applicable *LP-Gas Safety Rules* in effect at the time of the installation, repair, or maintenance.**

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

§9.956. Joining Methods.

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

(d) Corrugated stainless steel tubing shall only be joined using mechanical joint fittings tested and listed in compliance with ANSI/AGA LC-1, *Interior Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing.*

(e)[(d)] Joints in polyethylene pipe or tubing shall be made by heat-fusion, compression-type mechanical or factory assembled transition fittings or factory assembled anodeless risers in accordance with the manufacturer's instructions. Compression-type mechanical fittings shall not be used on any polyethylene pipe above two-inch internal pipe size (IPS). Heat-fusion and factory assembled transition fittings may be used to make joints in all sizes of polyethylene pipe or tubing.

(f)[(e)] In addition to other LP-gas certification requirements, prior to performing heat-fusion on polyethylene pipe or tubing, a person must be certified by either the commission or an individual or certification school authorized by the commission. The certification must confirm that the person has a working knowledge of heat-fusion methods and the ability to properly perform the heat-fusion activity. **Licensees shall retain written proof regarding any current certifications for installation and repair methods for CSST.**

(g)[(f)] An LPG Form 506 must be completed and maintained by the employer of a person certified to perform heat-fusion activities and the form must be available for review by a representative of the commission. If a person certified as required by subsection (e) of this section does not perform any heat-fusion activity for 12 consecutive months, that person must be recertified prior to resuming any heat-fusion activities.

(h)[(g)] Fittings shall be installed in accordance with the manufacturer's instructions. The following requirement(s) shall be adhered to when making such joints in polyethylene pipe or tubing.

(1) Polyethylene pipe or tubing shall not be joined by a threaded or miter joint.

(2) The joint shall be designed and installed so that the longitudinal pull-out resistance of the joint will be at least equal to the tensile strength of the polyethylene piping material.

(3) Heat-fusion joints shall be made in accordance with qualified procedures which have been established and proven by test to produce gas-tight joints at least as strong as the pipe or tubing being joined.

(4) electrofusion is the only acceptable method of making heat-fusion joints between different densities of polyethylene pipe or tubing.

(5) Connections between metallic and polyethylene pipe or tubing shall be made only outside, underground, and with transition fittings that are acceptable for LP-gas service and that comply with Category 1 of ASTM D-2513, except polyethylene gas piping may terminate aboveground, outside of buildings through the use of factory assembled anodeless risers in accordance with §9. 959(k) of this title (relating to exterior piping).

(6) Joints shall be made with the joining method recommended by the pipe or tubing manufacturer.

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 March 12, 1996.

TRD-9603504 Mary Ross McDonald
Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: April 22, 1996

For further information, please call: (512) 463-7008

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter CC. Early High School Graduation Scholarship Program

- **19 TAC §21.953, §21.956**

The Texas Higher Education Coordinating Board proposes amendments to §21.953 and §21.956, concerning Early High School Graduation Scholarship Program. These and a number of other amendments were approved by the Board at its October meeting, but the staff failed to include these amendments in the filing sent to the Texas Register. The mistake was just recently discovered and is being corrected by reproposing the amendments. The amendments are to implement provisions of House Bill 1479 regarding the Early High School Graduation Scholarship Program. The rules will provide $1,000 state scholarships to students graduating high school in no more than 36 months.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rule. Funds for the scholarships will come from savings in the Foundation School Fund due to students graduating in three as opposed to four years.

Ms. Cobb also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the state will save approximately 75% of the cost of maintaining a student through one year of high school. Students will benefit by $1,000 scholarships. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

There were no other sections affected by these rules.

§21.953. Eligible Institutions.

(a) The board shall approve for participation in the Early High School Graduation Scholarship Program any Texas public or **private institution of higher education. For purposes of this program, "private institution of higher education" includes only a private or independent college or university that is:**

(1) organized under the Texas Non-profit Corporation Act;

(2) exempt from taxation under Article VIII, Section 2, of the Texas Constitution and Section 501(c)(3) of the Internal Revenue Code of 1986; and

(3) accredited by a recognized accrediting agency [institution of higher education; or any nonprofit, independent Texas college or university which is a regular member of, or candidate for accreditation by the Commission on Colleges of the Southern Association of Colleges and Schools. Nonprofit, independent professional schools which award bachelor's or other higher degrees, and which are not members of the Commission on Colleges of the Southern Association of Colleges and Schools, may petition the board for consideration of approval. In any case, a theological or religious seminary shall not be eligible for approval].

(b) (No change.)

(c) To be eligible, a **private institution of higher education** [an independent institution] must provide a matching award for the state funds awarded through the Early High School Graduation Scholarship Program.

§21.956. Award Amounts. The amount awarded a student through this program may not exceed the least of:

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

(3) the sum of $1,000 minus the amount the student received through the Tuition Credit Program. Students attending eligible **private institutions of higher education** [independent institutions] must receive an equal amount of institutional tuition gift assistance during the same enrollment period.

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 March 12, 1996.

TRD-9603475 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: April 22, 1996

For further information, please call: (512) 483-6160

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TITLE 22. EXAMINING BOARDS

Part XXIX. Texas Board of Professional Land Surveying

Chapter 661. General Rules of Procedures and Practices

Applications, Examinations, and Licensing

- **22 TAC §661.45**

The Texas Board of Professional Land Surveying proposes an amendment to §661.45, concerning examinations. This amendment clearly defines what action might be taken if an applicant compromises the confidentiality of the examination.

Sandy Smith, executive director, has determined that for the first five-year period this amendment is in effect there will be no fiscal implica-

tions for state or local governments as a result of enforcing or administering this amendment.

Ms. Smith also has determined that for the first five-year period this amendment is in effect there are no anticipated public benefits as a result of enforcing this section. There will be no effect or economic cost to small or large businesses or persons who are required to comply with this amendment.

Comments may be submitted to Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752.

The amendment is proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state and this Act.

The Texas Civil Statutes, Article 5282c, is affected by this proposed amendment.

§661.45. Examinations.

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

(f) The contents of all exam materials are confidential. Any applicant who takes an action with the intent to compromise the confidentiality of the examination is subject to disciplinary sanctions, administrative penalties, or both. In assessing an appropriate penalty or sanction, the Board may consider:

(1) the penalties and sanctions set out in Texas Civil Statutes, Article 5282c;

(2) disqualifying the applicant from taking future exams for a period of three years; and

(3) disqualifying the applicant from taking future exams until the applicant successfully completes a Board-approved study of professional ethics.

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 March 13, 1996.

TRD-9603515 Sandy Smith
Executive Director
Texas Board of Professional Land Surveying

Earliest possible date of adoption: April 22, 1996

For further information, please call: (512) 452-9427

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WITHDRAWN RULES

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 324. Used Oil

Subchapter B. Financial Assurance for Closure Section

• **30 TAC §§324.50-324.54**

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new §§324.50-324.54 which appeared in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8978).

Issued in Austin, Texas, on March 13, 1996.

TRD-9603544 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

For further information, please call: (512) 239-6087

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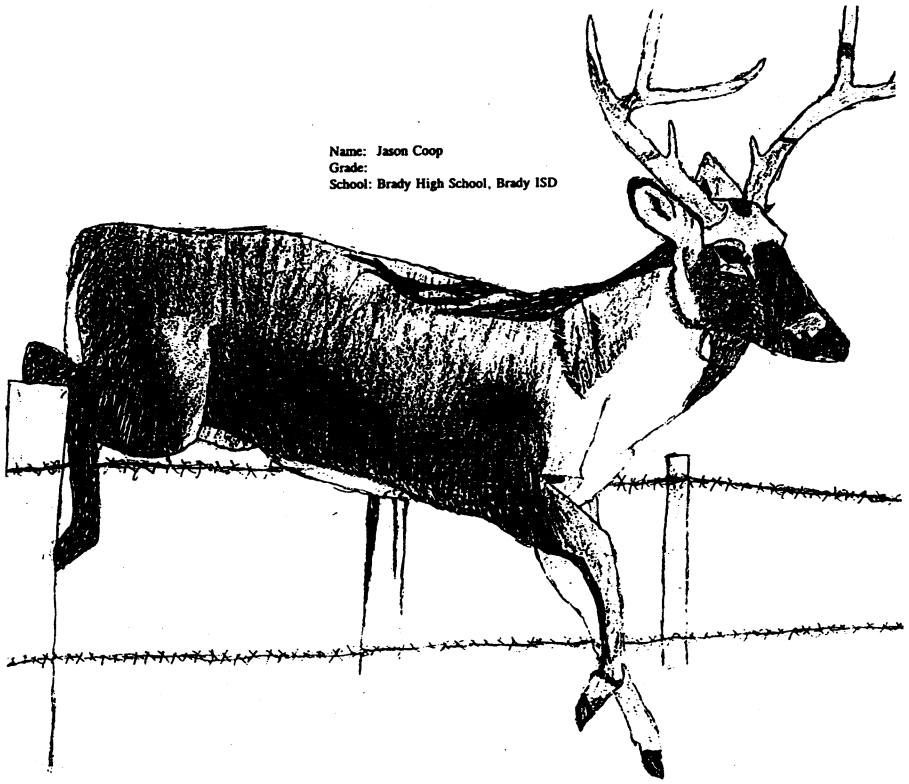
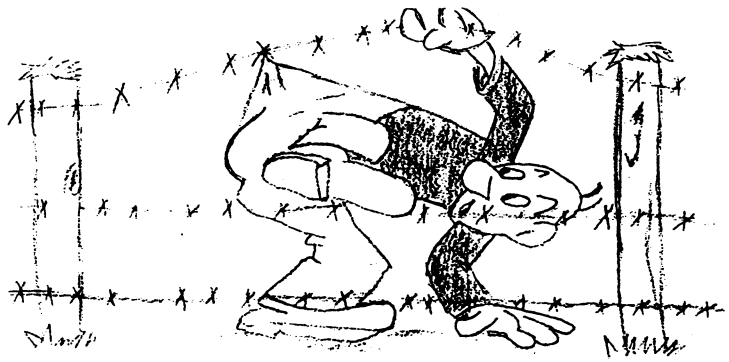
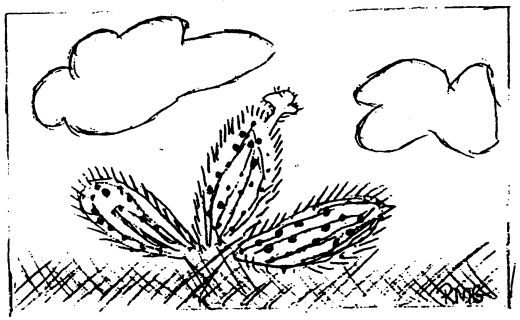


Name: Jason Coop
Grade:
School: Brady High School, Brady ISD

Name: Amy Adame
Grade: 11
School: Brady High School, Brady ISD



Name: Kilee McBee
Grade: 11
School: Brady High School, Brady ISD



Name: Rachel Graves
Grade: 11
School: Brady High School, Brady ISD

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 7. BANKING AND SECURITIES
Part II. Texas Department of Banking
Chapter 26. Perpetual-care Cemeteries

• 7 TAC §26.1

The Banking Department of Texas (the department) adopts an amendment to §26.1, concerning fees and assessments for perpetual-care cemetery corporations, with changes to the proposed text as published in the January 16, 1996, issue of the *Texas Register* (21 TexReg 418).

The amendment to §26.1(c) increases certain fees paid by corporations operating as perpetual-care cemeteries regulated by the department. As amended, §26.1(c) permits the department to annually assess each corporation at a rate not greater than $0.0026 for each dollar of the value of its perpetual-care cemetery trust fund, with certain exclusions, in an amount not to exceed $5,500 for one examination in each fiscal year. The amendment also requires each corporation to pay $500 a day plus travel costs for each examiner required to perform any subsequent examination in a given fiscal year because of noncompliance with the Texas Health and Safety Code, Title 8, Subtitle C, Chapter 712 (the Act), or rules adopted pursuant thereto, or because of failure to respond to departmental requests in furtherance of the department's enforcement responsibilities. In addition, as amended, §26.1(c) provides for a minimum $100 examination fee. Previously, the minimum examination fee was $25. The adopted fee increases and other fee-related amendments are necessary to enable the perpetual-care cemeteries section of the special audits division to be self-funding. In previous years, this section of the division has not borne the costs associated with regulating perpetual-care cemeteries; therefore, in the past, other areas of the agency have absorbed these costs. Other changes to the section merely simplify its text.

The department held a public hearing on the proposed amendment and also received one set of written comments. A commenter, appearing at the hearing on behalf of the Texas Cemetery Association (the Association) requested additional time to poll its membership for comments. The department agreed to this request and set a deadline of February 26, 1996, for receiving additional written comments; however, the department did not receive comments from the Association.

No group or association submitted comments for or against the proposed amendment, although one commenter objected to it.

The commenter stated that the section should exclude voluntary contributions from the amount of perpetual-care cemetery funds subject to assessment for the examination fee. The department concurs and has excepted voluntary contributions, as well as capital gains and losses, from the fund amount subject to assessment.

The commenter also alleged that individuals with smaller funds carry the burden of the increased examination fees. The department has declined to change the fee structure; under §26.1, as amended, every perpetual-care cemetery covers its own cost of regulation.

The same commenter also stated that increased fees reduce the funds available for cemetery maintenance. The Act, §712.021(b), requires that the principal of the perpetual-care cemetery fund remain inviolate. Furthermore, the Act, §712.044, mandates that the examination fee be "reasonable and necessary . . . to defray the cost of administering [the Act]." The department maintains that the fee established under the amendment to §26.01 is both reasonable and necessary as the statute requires.

This commenter also noted that the annual increase to both small and large businesses is considerably more that the proposed preamble indicated. The department has examined projections the commenter submitted to substantiate its claim and is unable to determine their basis, whereas the department's projections of the fiscal implications of this section are based on the application of the statutory mandate of the Act, §712.044, and the terms of §26.01, as amended, to the various cemetery fund levels.

Finally, this same commenter stated that the criteria established in §26.1(c) for assessing an additional fee for examinations following the initial examination each year are not sufficiently specific and that the fee structure will overcompensate the department for the amount of an examiner's time. The department disagrees. First, the criteria, i.e., failure to comply with the Act or rules promulgated under the Act and failure to comply with departmental requests in furtherance of the department's regulatory responsibilities, are specific and subject to ready, verifiable determination as to whether they exist. Secondly, the Act, §712.044(b), does not limit the amount of the examination assessment to the cost of an examiner's time. It provides that the fee be sufficient to defray the cost of administering the Act; as a consequence, the examination fee applicable to perpetual-care cemeteries must be adequate to cover the entire cost of regulation of this industry, not just the cost of the examiners. The amendment to §26.01 has been designed to accomplish this purpose.

The amendment is adopted pursuant to the department's rule-making authority under the Act, §712.042(a) and §712.044(b), which empowers the department to set fees in an amount sufficient to defray the cost of administering the Act.

§26.1. Fees and Assessments.

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

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

(3) Corporation-A corporation that is organized under the Act, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in Texas.

(4)-(7) (No change.)

(b) Filing fees. The filing fees set forth in this subsection are either specifically set out in the Act or have been set in accordance with the Act to reasonably approximate the agency's cost of administering the Act with respect to each particular filing.

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

(3) Time of payment. Except as otherwise provided in this section, all fees are nonrefundable and due at the time the related documentary filing is made. Failure to timely pay fees or costs under this section constitutes grounds for enforcement action by the department under the Act.

(c) Examination fees. The department shall assess and collect nonrefundable examination fees in accordance with this subsection. Except as otherwise provided in this section, any assessed fee or an installment payment as part of a fee is due at the time of billing. The department shall annually assess each corporation an examination fee for one examination, not to exceed $5,500 in a fiscal year, at a rate of not more than $0.0026 per dollar of the aggregate of required deposits to the fund, excluding capital gains, capital losses, and any voluntary contributions, from inception of the fund to the date of the most recent examination report or annual statement as determined pursuant to the Health and Safety Code, §712.028, and reflected in the examination report or annual statement. The department may levy this fee in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to defray the costs of examination and the administration of the Act. If the examination fee as computed in this subsection is less than $100, a minimum examination fee of $100 shall be levied and collected. If additional examinations of a corporation are required in the same fiscal year as a result of the corporation's failure to comply with the Act or this chapter or as a result of its failure to comply with departmental requests in furtherance of the department's regulatory responsibilities under the Act or this chapter, an additional fee of $500 per day, plus examiner travel costs, will be assessed against the corporation for each examiner assigned to an additional examination.

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

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

Issued in Austin, Texas, on March 12, 1996.

TRD-9603455 Everette D. Jobe
General Counsel
Texas Department of Banking

Effective date: April 2, 1996

Proposal publication date: January 16, 1996

For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 1. General Rules of Practice and Procedure

Subchapter C. Docketing, Notice, and Service

• 16 TAC §1.49

The Railroad Commission of Texas adopts new §1.49, applicable to oil and gas contested cases brought by the Legal Enforcement Section of the Office of General Counsel, without changes to the version published in the January 26, 1996, issue of the *Texas Register* (21 TexReg 650).

The new rule sets out legal standards and procedures for service of process, answers, requests for hearing, the setting of hearings, the issuance of default final orders, and motions for rehearing in oil and gas enforcement cases. Under the new rule, hearings will no longer be automatically set in most oil and gas enforcement cases; setting of a hearing will not take place until the respondent files a hearing request or an answer to the original complaint. In cases of actual or imminent pollution, a hearing date will be set and notice of the hearing will be provided along with the Original Complaint. The new rule also makes clear that motions for rehearing may be made on equitable grounds or on grounds that there is error in the commission's final order.

No comments were received regarding adoption of the new section.

The new rule will increase efficiency and decrease processing time for the majority of oil and gas contested cases brought by Legal Enforcement. Under current practice, hearings are set for every case, even though about nine out of ten result in default. Under this new rule, hearings will be set in most cases only when a respondent files a hearing request or an answer. Avoiding needless setting of hearings will clear the hearing docket of unnecessary items and make hearing rooms more available for contested cases with appearances. Setting the initial hearing date with the benefit of a response to the Original Complaint will result in fewer postponements and encourage settlements.

The Railroad Commission adopts the new rule pursuant to Texas Government Code, §2001.004(1), which requires the commission to adopt rules of practice stating the nature of all available formal and informal procedures; Texas Government Code, §2001.056(4), which authorizes administrative contested cases to be informally disposed of by default; Texas Natural Resources Code, §81.052, which authorizes the commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the commission; and §1.1(c) of this title (relating to Purpose, Scope, and Conflict with Special Rules), which permits the Railroad commission to adopt special rules of practice applicable only in proceedings before a specific division.

The following are the statutes, articles, or codes affected by the adopted new rule: §1.49-Texas Government Code, §§2001.056(4); 2001.004(1) and Texas Natural Resources Code, §81.052, *et seq.*

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

Issued in Austin, Texas, on March 12, 1996.

TRD-9603505 Mary Ross McDonald
Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas

Effective date: April 2, 1996

Proposal publication date: January 26, 1996

For further information, please call: (512) 463-7008

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TITLE 22. EXAMINING BOARDS

Part XXXIII. Texas State Board of Examiners of Perfusionists

Chapter 761. Perfusionists

• 22 TAC §761.14

The Texas State Board of Examiners of Perfusionists adopts new §761.14, concerning the regulation of licensed perfusionists and provisionally licensed perfusionists, without changes to the proposed text as published in the January 2, 1996, issue of the *Texas Register* (21 TexReg 20).

The new section establishes continuing education requirements for licensed and provisionally licensed perfusionists. The new section will assure the regulation of perfusionists continues to identify competent practitioners and that licensees are increasing their knowledge and abilities through continuing education.

No comments were received regarding adoption of the new section.

The new section is adopted under the Licensed Perfusionists Act, Texas Civil Statutes, Article 4529e, §7, which provides the Texas State Board of Examiners of Perfusionists with the authority to adopt rules concerning the regulation and licensure of perfusionists.

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

Issued in Austin, Texas, on March 14, 1996.

TRD-9603613 Shannon Ballard
Chairman
Texas State Board of Examiners of Perfusionists

Effective date: April 4, 1996

Proposal publication date: January 2, 1996

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

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 134. Guidelines for Medical Services, Charges, and Payments

Subchapter L. Medical Fee Guidelines

• 28 TAC §134.201

(Editor's Note: The following adopted new rule submitted by Texas Workers' Compensation Commission was inadvertently omitted from the March 12, 1996, issue of the Texas Register. This new rule was submitted in conjunction with the repeal of this section which was printed in the March 12, 1996, issue (21 TexReg 2090). The effective date is April 1, 1996.)

The Texas Workers' Compensation Commission (the commission) adopts new §134.201, concerning the Medical Fee Guideline for medical treatments, and services provided under the Texas Workers' Compensation Act, with changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8573) and simultaneously adopts the repeal of current §134.201, concerning the medical fee guideline for medical treatments, and services provided under the Texas Workers' Compensation Act, as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8573) and adopted in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2091). New §134.201 adopts by reference the *Texas Workers' Compensation Commission Medical Fee Guideline 1996*. Copies of the guideline may be obtained from the Publications Department, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704.

As required by the Government Code, §2001.033(1), the commission's reasoned justification is set out in this preamble. The reasoned justification is contained throughout the preamble, including the following portions: the reasons why the new rule and repeal are necessary; the factual, policy, and legal bases for the rule; restatement of the factual basis of the rule; a summary of comments received; names of those who commented and whether the commenters were for or against adoption of the new rule and repeal; and the reasons why the agency disagrees with some of the comments, submissions, and proposals.

Changes made to the rule and the guideline as proposed are in response to public comment received in writing and at a public hearing held on November 9, 1995, and are described in the summary of comments and responses section of this preamble. Other changes were made for consistency or clarification, or, to correct typographical or grammatical errors.

This new rule establishes guidelines for reimbursements made for medical treatments, services, and equipment rendered by health care providers, excluding inpatient hospitalization and ambulatory surgical centers, and for rentals or sales of certain durable medical equipment including orthotics and prosthetics. The rule adopts by reference the publication of a new fee guideline manual, entitled *Texas Workers' Compensation 1996 Medical Fee Guideline*. The fee guideline is divided into the following sections ("medical services groups"): Evaluation/Management; Medicine; Surgery; Anesthesia; Radiology; Pathology; Durable Medical Equipment; and Pharmaceutical. Ground rules at the beginning of each section provide definitions necessary to correctly interpret, report, and reimburse the treatments, services, and equipment covered by the section. The new rule requires that when a maximum allowable reimbursement ("MAR") is established in the guideline for medical treatments, services, or equipment rendered under the Texas Workers' Compensation Act, the amount of reimbursement payable to the health care provider will be the lesser of the providers' usual fees and charges or the MAR established in the medical fee guideline. For supplies, for codes used for miscellaneous billings, and for durable medical equipment, no MARs have been established. Reimbursement for Durable Medical Equipment (DME) or Health Care Financing Administration Procedure Coding System (HCPCS) are to be paid at the prenegotiated contract rate or, if no contract exists, reimbursement is to be fair and reasonable. Fair and reasonable reimbursement for DME shall be the same as fees set for "D" codes in the 1991 Medical Fee Guideline. All other items for which an MAR is not established shall be reimbursed at fair and reasonable rates. The rule states that copies of the guideline may be obtained from the Publications Department, Texas Workers' Compensation Commission, the Southfield Building, 4000 South IH-35, Austin, Texas 78704.

Medical treatments and services are identified in the new §134.201 by a five-digit numeric code obtained from *Physicians' Current Procedural Terminology*, Fourth Edition, Copyright 1994 by the American Medical Association. These numeric codes are commonly referred to as "CPT" codes. CPT codes and descriptions only are copyright 1994 American Medical Association (or such other date of publication as defined in the federal copyright laws). The *Physicians' Current Procedural Terminology* includes with the numeric codes a listing of descriptive terms and modifiers for reporting medical treatments, services, and equipment. These codes are industry standard and are used by Medicare, Medicaid, CHAMPUS, and private insurance plans. CPT codes have been used in the commission's medical fee guidelines since 1988. The use of CPT codes will continue to provide an efficient means for TWCC to track services in its database, for health care providers to bill and receive payment, and for insurance carriers to make proper payments. CPT codes are divided into medical services groups.

Items in the durable medical equipment group are identified in the new §134.201 by a code obtained from the HCPCS rather than the CPT coding system. The HCPCS coding was chosen for the durable medical equipment group because it has standardized detailed descriptions which address equipment, services, and supplies not addressed by the use of CPT codes. It was determined that use of HCPCS codes will provide expanded information about the durable medical equipment group in the commission database and that this information will be useful during future modifications of the commission's medical fee guideline. The use of these codes is appropriate because they are an industry standard.

The commission also created three of its own procedural codes–WC001, WC002, and WC003. The codes are used by health care providers billing for second opinion on spinal surgery examinations. Because these examinations are unique to Texas' workers' compensation system, no national coding system provides codes for them and it was necessary for the commission to create its own.

The commission-appointed Medical Advisory Committee (MAC) provided direct input during the development of the rule and the new medical fee guideline. The MAC, by statute (Texas Labor Code, §413.005), is to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and utilization guidelines established under the Texas Labor Code, §423.011. The MAC advises the commission in the review and revision of medical policies and fee guidelines required under the Texas Labor Code, §413.012. The MAC is composed of representative members appointed by the commission as follows: a representative of a public health care facility, a representative of a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a pharmacist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, a representative of employers, a representative of employees, and two representatives of the general public. The expertise of this group played an important role in the development of this rule and the new medical fee guideline.

The commission's medical forms database played a central role in the development of the new medical fee guideline. This database contains in excess of 16.5 million bills from Texas' workers' compensation system. These bills represent $4.1 billion in charges and $3.1 billion in reimbursement for medical and hospital services provided since 1991. Between 300,000 and 400,000 bills are added to the database monthly through electronic data submitted by insurance carriers. The electronic filing of the bills makes the information contained in the database reliable because the necessity of manual entry of billing data into the commission system and, thus, a significant cause of errors in the database, is eliminated. This data provides a wealth of information on charges, reimbursements, and patterns of practice of health care providers. The bills detail the type of medical treatments, services, and equipment being billed by the various health care professions and the amounts being paid for those medical treatments, services, and equipment by insurance carriers.

Prior to the development of the new medical fee guideline, an extensive research program and review of the relevant literature (see the bibliography following the comments portion of this preamble) and the existing medical fee guideline ("December 1991 guideline") was undertaken by

the commission to assist in evaluating the strengths and deficiencies of that guideline. In December 1993, the Workers' Compensation Research Institute in Cambridge, Massachusetts released an extensive analysis of the workers' compensation medical fee guidelines in 27 states. With one exception, the medical fee guidelines considered were those in effect on January 1, 1992, including Texas' December 1991 guideline. Fee reimbursement systems were analyzed for reimbursement amounts, the difference between the fee guideline reimbursement amounts and the actual charges, comprehensiveness, access to care, and regional economics. The results of WCRI's analysis revealed that, overall, Texas' December 1991 guideline reimbursed at 9.0% above the median fee guideline level and that variations in reimbursements among the states were apparently not related to variations in costs between the states. Both the WCRI study and the commission's own analysis indicated that Texas' workers' compensation system reimbursed 65% above Medicare national full fee reimbursement. Based on this research and review of the literature and the December 1991 guideline, the commission established overall policy objectives. The new medical fee guideline was to move Texas towards a median cost position in comparison with other states and towards a market based system which reimburses based on values set by the market for procedures rather RVUs which are set by McGraw-Hill using provider surveys.

After the commission established this policy objective, the commission again analyzed its database to determine what impact a move to the median would have. The commission's database indicated a great variation existed between the reimbursement allowed by the December 1991 guideline and the amounts being billed by health care providers for their services ("the usual and customary charge"). As a result, an immediate and full shift away from the relative value system used in the December 1991 guideline and towards a market based system could destabilize the system by significantly altering which health care providers participated in the workers' compensation system as well as how those participants utilized the various treatments, services, and equipment. For example, health care providers who built their practice around a group of codes for which reimbursement was dropped significantly might elect to drop out of the workers' compensation system which would interfere with the commission's obligation to ensure access to quality of medical care. Utilization patterns for services for which fees increased might also shift and those shifts might prevent the commission from achieving its statutory duty of medical cost control. The goal of establishing an expenditure neutral system was identified as an alternative to a fully market based system, which would allow Texas to move toward a market-oriented system without interrupting injured workers' access to quality medical care while achieving cost containment. Remaining as close as possible to expenditure neutral would also keep expenditures on medical services in Texas relatively stable so that the effects of inflation and changes in other states' medical fee guidelines would help move Texas towards a median position.

With the statutory and policy mandates and objectives in mind, commission staff undertook an analysis of the commission's database to determine what revisions to the medical fee guideline were necessary. Seven million, nine hundred thousand, and three hundred seventy-one billable units in the commission's medical forms database for services rendered from June 1, 1993 to May 31, 1994 were used to do statistical analysis. Each unit represented a single billing for a specific CPT code. These billable units represented the top 200 CPT codes ("the sample") by total amount of reimbursement paid which were selected for analysis and to compare the December 1991 guideline reimbursements against statewide usual and customary charges. The top 200 codes were chosen as the sample because the total amount paid for reimbursement of these codes represented approximately 82% of the total reimbursement for all CPT codes during the period in question. The analysis also revealed that approximately 40% of health care providers were billing the reimbursement amount set by the fee guideline. Because no reference point or benchmarking against market based charges was done during the development of the December 1991 guideline, the commission determined that it was appropriate to obtain data from outside sources to use in evaluating what changes in reimbursements were necessary to move Texas towards a median cost position while remaining close to expenditure neutral.

As a result, maximum allowable reimbursements in the adopted medical fee guideline were derived, in part, from the use of relative values units (RVUs) contained in *Relative Values for Physicians*, McGraw-Hill, Inc., copyright 1995. A relative value for each CPT code is derived by rating the time, skill, severity of illness, risk to patient, and risk to physician and is used to determine, in part, how much reimbursement should be paid for a particular code in relation to all other codes. The RVUs used in the new guideline were assigned to each code by McGraw-Hill after considering the factors listed previously in this preamble. The commission elected to switch from its current source of relative values, the California Relative Value System, to McGraw-Hill's *Relative Values for Physicians* because it is an industry standard and has been in use since 1984. The publication was developed through intensive research that reflects medical practice and reimbursement issues as compiled and relayed by national physician surveys.

Maximum allowable reimbursements in the adopted medical fee guideline are also derived, in part, from the use of conversion factors contained in copyrighted information provided by Innervation Technology Corporation (ITC). A conversion factor is the dollar value for each relative value unit and is used to convert RVUs to a dollar value reimbursement amount. A separate conversion factor is assigned to each medical services group. Conversion factors are derived by dividing the sum of all charges for a medical services group by the sum of the RVUs for each charge in the same group. As is common statistical practice, ITC supplied conversion factors for every 10th percentile starting at the 20th percentile (i.e. 20th, 30th, 40th, etc.). The copyrighted information obtained from ITC contained 20 million medical bills submitted statewide during the period from February 1, 1994 to January 31, 1995. ITC collects medical bills for services provided in a fee-for-service environment. This excludes bills for services covered by governmental payors (e.g. Medicare and Medicaid) as well as bills covered under managed care contracts. A fee-for-service environment is most representative of Texas workers' compensation system because injured workers are allowed to select their own health care providers, the payors (insurance carriers) generally do not have any contractual arrangements regarding fees with the health care providers, and the health care providers have broad latitude in determining the course of treatment for each individual injury. Therefore, ITC's database was most representative of the Texas' workers' compensation system.

A review of the ITC data was undertaken to identify whether any substantial variance in reimbursements existed among various regions of the state. To do this, ITC's medical billing data for Texas was grouped by ITC according to zip code to create 30 regional zones (29 metropolitan regions and one rural region representing all zip codes not included in a metropolitan region) and then analyzed according to medical service groups and amounts charged. The analysis revealed minimal overall variance. The sample was then ranked in percentile form. This entailed putting all of the bills for each of the chosen CPT codes in rank order from the lowest amount billed for the code to the highest amount billed for the code. The bills were then divided into 10 groups with each group having an equal number of bills. The bill for the highest amount in each group then represented the dollar value of the percentile. (For example, a group of 20 medical bills for the same code is put in rank order and shows charges of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $7.00, $8.00, $9.00, $10, $11, $12, $13, $14, $15, $16, $17, $18, $19, and $20. When divided into ten equal size groups, each group has two bills. Since the highest billed amount in the group representing the two lowest bills is $2.00, $2.00 represents the 10th percentile. Likewise, $4.00 represents the 20th percentile because it is the highest bill in the group representing the third and fourth lowest bills.) Conversion factors were then calculated for every 10th percentile of every region by taking the sum of the fees charged for each medical services group and dividing that number by the sum of the relative values of the CPT codes within that group. The conversion factor for each medical services group was then compared to the conversion factors for the same medical services group in each of the other 29 Texas regions and it was determined that the conversion factors were quite homogenous in nature. The conversion factors for each medical services group were then averaged to arrive at a single conversion factor for each medical services group. The purpose of this analysis was to determine whether charges differed substantially among the 30 regions. The exhibited variance did not justify developing a medical fee guideline with regional MARs.

After completing the regional analysis and obtaining the McGraw-Hill RVUs, the number of codes in the sample dropped from 200 to 165. Thirty-five codes were dropped from the sample either because McGraw-Hill did not assign a relative value to them or because the

individual code was a "dump code" which is used to bill a large number of different treatments, services, or equipment which do not have a specific RVU assigned to them (e.g. Code 97139 is used to bill for physical medicine services ranging from acupuncture to taping to stabilize or align). The codes that were dropped from the sample due to lack of an assigned RVU fell into two groups. Some of the codes do not have relative values because the complexity of the procedure depends on the severity of the individual injury while others were in the anesthesia group to which ITC does not assign conversion factors. After these 35 codes were dropped from the sample, the remaining 165 codes were analyzed and it was determined that this group represented approximately 79% of the total amount reimbursed for all codes during the period of June 1, 1993 to May 31, 1994.

All of the bills in the commission's database for the 165 CPT codes in the sample were divided by medical services group and the total amount reimbursed for each group during the sample period was determined. The staff then determined the number of times each code was billed (frequency) and multiplied the frequency of each code in the sample by the McGraw-Hill RVU for the code and the ITC conversion factors for the appropriate medical services group. The resulting product represents the total dollar amount that would be reimbursed for the sample codes in each medical services group at a chosen ITC conversion factor. This amount was compared with the total dollar amount reimbursed for the sample codes in that medical services group under the December 1991 guideline. The ITC conversion factor which brought total reimbursement for each medical services group closest to the reimbursement for that group under the December 1991 guideline was assigned as the conversion factor for that group. The reimbursement for an individual code ("the new reimbursement amount") was then calculated by multiplying the McGraw-Hill RVU for each code by the ITC conversion factor for the appropriate medical services group. It is important to note, however, that while this methodology attempted to retain the same level of total reimbursement for each medical services group, the reimbursement for individual codes within a group did change. This occurred because a new set of RVUs was utilized and the conversion factors for each medical services group differed from the group's conversion factor in the December 1991 guideline. As a result, the reimbursement for individual treatments and services varied from the reimbursement for the same treatment, service, or equipment under the December 1991 guideline. Assigning a single conversion factor to each medical services group rather than to each CPT code is appropriate because it is the predominant practice in workers' compensation and it was done in the December 1991 guideline.

As noted previously in this preamble, the commission did not benchmark its MARs during the development of the December 1991 guideline. This led to the development of a fee guideline in which some medical services groups were reimbursed around the 10th percentile when compared to ITC data while other groups were reimbursed above the 90th percentile. In addition, some of the individual codes within each group were reimbursed far above or far below the median of the ITC data. This meant that reimbursements for some individual codes were too high while others were too low. During the development of the new guideline, the commission was concerned that significant reductions in the reimbursement of individual codes would seriously affect providers whose practice focused primarily on activities associated with those codes and lead to a loss of health care providers from the system. This, in turn, could affect access to quality health care. In addition, significant increases in the reimbursement for individual codes may also lead to significant changes in utilization of those codes and impact on the effort to implement an expenditure neutral system. These problems were intensified by the fact that the commission changed vendors of RVUs which resulted in changes to the RVU assigned to many individual codes. Either an increase or decrease in both the RVU and conversion factor for an individual code could radically change the reimbursement for that code.

To address this problem, an acceptable deviation ("window") of 25% more or less than the December 1991 guideline reimbursement was established and the new reimbursement amount for each CPT code in the sample was compared with the reimbursement for the same code under the December 1991 guideline. If the reimbursement calculated using the new methodology varied more than 25% from the reimbursement for the same code under the December 1991 guideline, then the code was considered a statistical outlier. For example, CPT code 95861 is needle electromyography and the MAR established by the December 1991 guideline was $242.32. Under the new guideline, the code is assigned an RVU of 24.8 and a conversion factor of $6.44. As a result, the MAR for this code is $159.71 under the new guideline (24.8 x 6.44). The MAR for this code under the December 1991 guideline ($242.32) is 51.7% more than the amount calculated using the new methodology ($159.71). This falls outside the acceptable 25% deviation window. The codes identified as statistical outliers were selected for recalculation to avoid a radical reimbursement change. Codes which were not identified as outliers were set at the amount calculated using the new methodology.

To adjust the codes ("the adjusted reimbursement amount") which had an MAR under the new methodology which was more than 25% less than the MAR under the December 1991 guideline MAR, the MAR under the new methodology was multiplied by 1.25 so the adjusted reimbursement amount was set 25% above the amount initially calculated using the new methodology. This decreased the reduction from the December 1991 fee guideline amount. In the example in the previous paragraph of this preamble, the adjusted MAR for CPT code 95861 is set at $199. 64 (or $200 when rounded to the closest whole dollar amount). To adjust the codes which had an MAR under the new methodology which was more than 25% above the MAR under the December 1991 guideline MAR, the MAR under the new methodology was multiplied by .75 so the adjusted reimbursement amount was set 25% below the amount initially calculated using the new methodology. This reduced the increase in the MAR from the December 1991 guideline amount. The adjustment of the MAR for codes falling outside the 25% window was necessary to ensure that reimbursements remained high enough to encourage health care providers to remain in the workers' compensation system while not being so high that insurance carriers were forced to raise premium rates and employers elected to drop out of the workers' compensation system.

Analysis of the commission's database also indicated that for one medical services group, radiology, the reimbursement rates in the December 1991 guideline were actually far above the usual and customary charges and were, in fact, above ITC's 90th percentile. In fact, a majority of the bills in the commission's database for codes within the radiology group actually charged less than the MAR allowed under the December 1991 guideline for the specific radiology CPT code. This meant that Texas was allowing reimbursement for these codes at far above the median level of reimbursement statewide. Using the new methodology as the basis for establishing reimbursements for the radiology group would mean Texas would continue to reimburse for these codes at the high end of the ITC range. After further review of the reimbursements under the new methodology, it was determined that all other medical services groups were being reimbursed at or below the 50th percentile indicating that the radiology group as a whole was an outlier and needed to be moved in the direction of the other groups. The commission determined that setting the conversion factor for the radiology group at the 60th percentile reduced the total amount reimbursed for radiology by only 11% and moved the reimbursements paid for radiology closer to what the market was actually charging.

Reimbursements for the anesthesia group are based on the new methodology except that the RVUs assigned to codes in the anesthesia group were not derived from McGraw-Hill. Instead, the RVUs are those copyrighted by the American Society of Anesthesiologists (ASA). To calculate the total anesthesia value, the RVU (which is related to the complexity of the service) is added to modifying units (which adjust for factors such as patient physical status and qualifying circumstances) plus time units (which adjust for the length of the procedure). The ASA system of relative values is nationally used and highly respected and the methodology used to develop the RVUs is compatible with other systems of RVU development.

Reimbursements for the durable medical equipment group are based on prenegotiated contract rates or fair and reasonable reimbursement rather than MAR. As an interim measure, fair and reasonable reimbursement has been established as the same fees set for "D" codes in the 1991 Medical Fee Guideline. The commission will consider at its April public meeting, establishing a "cost plus a percentage of cost" method for reimbursement of DME to be used until MAR's can be established. These interim fees will provide a minimum fee and prevent DME providers from being reimbursed at an amount which will not cover their costs. In addition to the normal bill, a health care provider must also submit a statement of medical necessity together with an order or a prescription. Reimbursement in this manner was necessary for this group because the commission does not have a comprehensive

database which differentiates between various types of durable medical equipment in sufficient detail to establish an MAR for individual types of equipment. The use of the more detailed and specific HCPCS codes in this medical fee guideline should remedy this problem by providing the commission's database with more comprehensive information.

Total reimbursement for the evaluation/management group under the December 1991 guideline fell between the 30th and 40th percentiles and closer to the 30th. As a result, in the proposed medical fee guideline, reimbursement for this group was based on the conversion factor for the 30th percentile. Under this scenario, health care providers would be paid less for this group than under the December 1991 guideline. A number of comments during the public comment period pointed out that the workers' compensation system places a higher administrative burden on health care providers than other systems (e.g. periodic reports required from treating doctors on their workers' compensation patients, treating doctors required to review all other doctors' certifications of maximum medical improvement and impairment rating) and this higher administrative burden justified an increase in the reimbursements for codes in the evaluation/management group. The commission agreed that the workers' compensation system did place an additional administrative burden on health care providers and recognized that the ITC data did not reflect this additional burden. As a result, reimbursement for the evaluation/management codes was recalculated using the conversion factor for the next closest percentile, the 40th. The commission believes this will encourage primary care physicians, who are reimbursed most often by the use of these codes, to remain in the workers' compensation system.

Reimbursement for the pathology codes is based on the new methodology but pathology codes outside the original sample were used in making the calculation. In the original sample of 200 codes, only three of the codes fell into the pathology group. This did not constitute a statistically significant sample. To remedy this problem, a new list of the top 500 CPT codes was generated and the nine most frequently billed pathology codes were used to calculate the reimbursement for this group and to determine which conversion factor was closest to allowing the new medical fee guideline to remain close to expenditure neutral.

Reimbursement for the physical medicine group was calculated using the conversion factor for the 20th percentile. Reimbursement for this group under the December 1991 guideline was far below the 20th percentile and, therefore, far below the median. As a result, although raising this group to the 20th percentile had a negative impact on the goal of expenditure neutrality, it was necessary to meet the policy objective of moving Texas towards the median as well as the statutory mandates of fair and reasonable reimbursement and access to quality health care. In addition, ITC does not provide a conversion factor below the 20th percentile.

The requirements for the filing of and reimbursement for medical reports have been deleted from the new medical fee guideline. The commission received a significant amount of public comment on this area and the issues raised require further consideration. The commission intends to address these issues in the future.

A number of the CPT codes are designated as I-codes by McGraw-Hill. Although RVUs are assigned to these codes, the designation indicates that less data or less consensus existed during the formulation of these RVUs than existed relative to other CPT codes not given the I-code designation. As a result, the designation indicates that the codes do not meet McGraw-Hill's highest level of confidence but they do, however, meet an acceptable level of confidence. Codes which do not meet even an acceptable level of confidence are identified as RNE (relativity not established) codes and those codes are not assigned relative values. Because I-codes often relate to new procedures on which little information is available, the commission determined that use of these codes was necessary to ensure that information about such procedures was available for the development of future guidelines. The commission also determined that the use of the McGraw-Hill RVUs for these codes was appropriate because McGraw-Hill had enough confidence to assign an RVU to these codes rather than identifying them as an RNE code. However, if sufficient evidence was submitted during the public comment period to demonstrate that an alternative RVU for an individual I-code was appropriate, the commission would use the alternative RVU supported by the evidence on the record rather than the McGraw-Hill RVU for that code. No evidence was submitted during the public comment period which was sufficient to establish the need for and to establish a basis for recalculating a change in the RVU of any I-code and, as a result, the medical fee guideline uses the RVUs assigned by McGraw-Hill to each individual I-code.

The one entirely new group of I-codes are the codes for osteopathic manipulation. These codes are a part of the medicine group. Although chiropractic and osteopathic manipulations are essentially the same service, the RVUs and, thus, the reimbursement for the osteopathic codes is significantly lower. As a result, the commission has amended the ground rules for these codes to allow a health care provider to bill an appropriate office visit code along with an osteopathic manipulation code to ensure reimbursement.

The public benefit anticipated as a result of enforcing the rule will be the revision of the medical fee guideline to update reimbursement amounts implementing medical cost containment measures designed to assure access to and the quality of medical care as required by the Workers' Compensation Act. It is anticipated that clear, fair guidelines will minimize disputes and encourage prompt payments to health care providers.

Based on current patterns of utilization, insurance carriers required to comply with the guidelines should experience less than a 4.0% increase in total medical service payments. This increase in medical service payments could be expected to result in a total system cost increase of less than 2.5%; however, total decreases in system costs achieved over the past four years through workers' compensation reform will more than compensate for this adjustment to medical service payments as will savings resulting from fewer medical fee disputes. As a result, no increase in employer's workers' compensation insurance premiums is expected.

There will be no fiscal impact on employees as a result of enforcing the rule. Because of some redistribution of total reimbursements, fiscal impact of this revision to the medical fee guidelines on health care providers will depend on their area of practice. Some health care providers will experience an increase in fees for services, while others will experience a decrease in fees and still others will experience no fiscal impact as a result of the adopted reimbursement system. Providers of radiology services will incur the largest overall decrease in reimbursements because the current allowable maximum reimbursement amounts for this medical services group were generally greater than the usual and customary charges of health care providers billing for these codes. The effect will not be as great as it first appears because reimbursement under the December 1991 guideline was the lesser of the amount billed or the MAR and the majority of bills in this group were for amounts considerably less than the MAR. The opposite effect will be experienced by those providers who bill for codes with reimbursements that are currently much lower than the usual and customary charges for those codes. The inclusion of an acceptable deviation in the medical fee guidelines will allow providers who bill for codes which are significantly decreased under the new methodology to escape the full impact of being forced immediately into the indicated percentile. Overall, there is expected to be a slight increase in payments to health care providers.

This guideline is adopted in order to comply with the statutory mandates in the Texas Labor Code, §413.011 that the commission establish by rule guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services, that the guidelines for fees be fair and reasonable and designed to ensure the quality of medical care and achieve effective medical cost control.

The commission considered all relevant statutory and policy mandates and objectives and designed this rule to achieve those mandates and objectives, including the following:

(1) establish guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services;

(2) ensure that injured workers receive the health care reasonably required by the nature of their injury, as and when needed;

(3) ensure guidelines for medical services fees are fair and reasonable;

(4) ensure quality health care to the injured workers of Texas;

(5) achieve effective medical cost control;

(6) ensure guidelines for medical services fees do not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or someone acting on that individual's behalf;

(7) consider the increased security of payment afforded by the Act in establishing the fee guidelines;

(8) maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used by the commission in adopting medical fee guidelines;

(9) ensure the commission's database contains information necessary to detect practices and patterns in medical charges and actual payments;

(10) ensure the commission's database can be used in a meaningful way to allow the commission to control medical costs as provided by the Act;

(11) move Texas towards a median cost position in comparison with other states; and

(12) remain close to expenditure neutral.

This rule achieves these objectives by its provisions, including the following:

(1) specifying the fees to be paid for medical treatments and services provided under the Texas Workers' Compensation Act;

(2) utilizing reimbursement rates that take into account the charges currently billed for each service and the current utilization rate of each service;

(3) utilizing reimbursement rates, which as a whole, should result in a less than 4.0% increase in total medical service payments;

(4) requiring that payment to a health care provider be the lesser of the amount specified in the fee guideline or the health care provider's usual fees and charges so that health care providers are not reimbursed for workers' compensation patients in excess of the amount that would be paid for similar treatment of non-workers' compensation patients;

(5) requiring supplies and durable medical equipment to be billed under an alternative coding system so that a reliable database regarding these items can be developed;

(6) shifting the methodology of the reimbursement system away from a relative value of services system and toward a market-based reimbursement system and phasing in this new methodology to avoid any adverse affect on access to quality medical care as well as any shocks or unintended shifts in utilization within the system;

(7) allowing anesthesia to be reimbursed under a relative value of services methodology which is widely accepted for that particular specialty and reflective of new technology in the field;

(8) moving MARs toward the median of the ITC data rather than to the higher percentiles to take into account the increased security of payment in the workers' compensation system; and

(9) increasing reimbursement for the evaluation/management group to ensure health care providers receive fair and reasonable reimbursement and injured workers have access to quality medical care.

In formulating this rule and the medical fee guideline, the commission carefully and fully analyzed all of the statutory and policy mandates and objectives and all the facts and evidence available and submitted, as well as all comments received. The commission utilized all of this, and its expertise and experience, to formulate this rule and the medical fee guideline which balance the statutory mandates to ensure injured workers receive the quality health care reasonably required by the nature of their injury as and when needed and to ensure the fee guidelines are fair and reasonable, with the statutory mandate to achieve effective medical cost control. Full and objective analysis and consideration was given to all comments received, as evidenced by the revisions made from the rule as proposed and the commission's responses to comments in this preamble.

Fair and reasonable fees are ensured by utilizing a market-based methodology that establishes reimbursement amounts which take into account the fees charged for each service and the minimal variance in these charges between different regions of the state. The guideline also ensures fair and reasonable fees by recognizing specific areas in which the Texas workers' compensation system places greater burdens on health care providers than does the open market and adjusting fees upward accordingly to compensate for these additional burdens. The guideline also ensures fair and reasonable fees by bringing the reimbursements for all codes and all medical services groups toward the median of the states in the WCRI study and, thereby, eliminating both the overpaid and underpaid outliers.

Quality of medical care is ensured by the commission's reliance upon input from experts from a variety of health care fields including medical doctors, medical equipment suppliers, registered nurses, and physical therapists. The guideline ensures access to health care and that quality care will be available by phasing in the shift from a relative value methodology to a market-based methodology which prevents destabilization in the system.

Effective medical cost control is ensured by establishing maximum allowable reimbursements for each medical treatment or service covered by the guideline; by lowering the maximum allowable reimbursement for the radiology codes when the commission's database indicated that most doctors charged less than the maximum reimbursement allowed by the December 1991 guideline; by moving the reimbursements allowed toward the median of the states in the WCRI study; and by adjusting the evaluation/management group codes to encourage the continued participation of primary care physicians in the system and reduce the need for routine treatments, procedures, and services to be performed by specialists billing more highly reimbursed codes.

A complete description of the changes in the proposed text made in response to public comment is found in the summaries of comments and responses which follow. Some of the more significant changes are as follows:

(1) The requirements for the filing of and reimbursement for medical reports have been deleted from the new medical fee guideline. The commission received a significant amount of public comment on this area and the issues raised require further consideration. The commission intends to address these issues in the future. The provisions of current TWCC rules regarding filing of and reimbursement for medical reports will remain in effect.

(2) The majority of the provisions in the proposed rule regarding the orthotics/prosthetics group were deleted and the remaining billing provisions have been combined with the durable medical equipment group because the information relating to the orthotics/prosthetics group text was too short to warrant its own section. These items are billed using HCPCS K- and L-codes and are reimbursed at a fair and reasonable rate. Insufficient data is currently available to set MARs for these codes but the use of HCPCS codes will allow the collection of data so that MARs can be set in future editions of the medical fee guideline.

(3) Reimbursement for DME was changed to allow pre-negotiated rates to be paid or if there is no pre-negotiated rate, the fair and reasonable rate. A fair and reasonable reimbursement for DME has been defined as the fees set for "D" codes in the 1991 Medical Fee Guideline.

(4) As noted previously in this preamble, reimbursement for the evaluation/management group has been increased from the 30th to the 40th percentile to take into account the additional administrative burdens imposed by the workers' compensation system.

(5) The ground rules governing the osteopathic manipulation codes have been changed to allow health care providers to bill an appropriate office visit code in addition to the osteopathic manipulation code.

(6) Documentation of procedure is not required for any supplies provided by a health care provider in the health care provider's office with a value of less than $50. DOP is also not required for supplies provided by a DME vendor.

(7) Throughout the new medical fee guideline the words "should", "will", and "must" have been changed to "shall" for consistency in situations where the provision is a requirement. This change also occurred in sections taken directly from the AMA CPT manual for consistency throughout the medical fee guideline.

(8) Reimbursements were increased for Designated Doctors and Required Medical Examination (RME) Doctors performing impairment

ratings where only a specialty area is being rated. In addition, reimbursements were increased for designated doctor examinations and required medical examinations where it is determined that maximum medical improvement has not been reached.

Comments were received on the proposed new Medical Fee Guideline from: Casey Cochran; Roger Canard; Kallene Purl, Medical Development Company; Peggy Lee, Capitol Anesthesiology Association; Sam Sakowitz, Allen Medical Equipment and Texas Association of Medical Equipment Dealers; Craig R. Dubois, Neural Logics, P.A.; Mike Allen, Certified Orthotic & Prosthetic Advocates, Inc.; Bohn D. Allen, Texas Medical Association; Michael Berkowitz, T-Bones; June Cheatham, Neuroskeletal Center; Janet Gabbert, Associated Orthopedics & Sports Medicine; Richard L. Amato, A-Tech Medical, Inc.; Troy Robinson, Prescription Management Services, Inc.; John Landino, MediQuip; C. M. Schade, Center For Pain Control; Gary A. Lamb, Professional Orthotic Services; Rhonda Fellows, EMPI, Inc.; Kyle Babick; Gail L. Chiasson, Orthofix; Arie J. Bronkhorst, Certified Orthotic and Prosthetic Advocates; Bruce P. McClellan, Prosthetic-Orthotic Associates of East Texas, Inc.; C. Michael Schuch, American Academy of Orthotist & Prosthetists; Dan Morgan, Texas Chapter of the American Academy of Orthotist and Prosthetists; Debbie Gauthier, Allen Orthotics and Prosthetics, Inc.; Deborah P. Kelly; Shapiro Dickstein; Doug Meyers, Meyers Brace and Limb Company Inc.; Dwain R. Faso, American Board For Certification in Orthotics and Prosthetics, Inc.; Gary W. Prescott, Prescott's Orthotics; George Brooks, Rehab West Texas Rehabilitation Center; James C. Hughes, Austin Orthotics and Prosthetics, Inc.; James M. McCoy, Professional Prosthetics; Jeff Bloch, Bloch Orthotic Labs; Joe Jones; John D. Martinez, San Antonio Orthotic; Jon B. Holmes, Muilenberg Prosthetics, Inc.; Kelly Kimbrough, IAOP; Kenneth Ray Hindman, The Walking Shop; Kim Doolan, Amputee Coalition of America; Lynda G. Marsh, Orthobionics, Inc.; Mark Voit, Center for Orthotics of South Texas; Pauline Ostermeyar; R. E. Draeger, Galveston Brace Limb Company; R. Dean Morgan, Footwear Consultants, Inc.; Rick Ravel, Karavel Shoes Pedorthic Center; Rudolph B. Becker, American Orthotic and Prosthetic Association; Scott B. Atha, Austin Orthotics and Prosthetics, Inc.; Tarif Zaki, International Association of Orthotics and Prosthetics; Tom LeTourneau, LeTourneau Lifelike Orthotics & Prosthetics; Vicki Smith, Smith's Orthopedic shoes, Inc.; Walter Hoke, Foot Specialty Products by Sunnyland; William J. Barringer, University of Oklahoma Health Sciences Center; William Millar, Millars Orthotic and Prosthetic Service; Richard D. Rehm, Occusystems, Inc.; Melissa A. Hood, OccuSystems, Inc.; Philip A. Becker, A. I. Saheba, & Kraig Martin, Gateway Industrial Medical Clinic; Roy S. Marokus, Earl C. Hoffer & Jacob Liebman, Amarillo Industrial Health Center; Jeremiah J. Twomey, Internal and Occupational Medicine; Bernard T. Swift, Jr., Texas MedClinic; Gregory M. Gilbert, OccuSystems, Inc.; Jeff Hunter, EBI Companies; Lyn D. Gurkoff, Center for Pain Control; Lori Tappan-Zahn, Center For Pain Control; Sylvia Burns; Richard R. Blide, Disability Evaluating Center; Carol Lusk, Spine Care Associates of Tyler; Gordon A. Irving, The University Center for Pain Medicine and Rehabilitation at Hermann; Mark E. Huff, Jr.; Charles Kennedy; Steven F. Reeder; Richard Riley Constant; Jeffrey N. Zink; Phillip Osborne; M. Cliff Cornette; William C. Monell; Don E. Blanton; J. Scott Hassell; P. J. Chandler; Michael D. Ciepiela; James Loftin, Dallas Pulmonary Association; W. John Ryan, Dallas Pulmonary Associates; John Harney; Lloyd Garland, Neurosurgical Unit; Richard W. Blide, Disability Evaluating Center; M. Gayle Glidewell; Terry Boucher, Texas Osteopathic Medical Association; Gary Gray, Texas Physical Therapy Association; Jeanette Winfree; Jaelene Fayhee, Texas Workers' Compensation Insurance Fund; H. Martin Blacker, Baylor College of Medicine; David Axelrad, Baylor College of Medicine; Kenneth M. Alo, Pain & Health Management Center; R. Sanford Kiser, Texas Pain Medicine Clinic; Richard L. Thomas, American Academy of Pain Management; Richard A. Peck, Acupuncture & Anesthetics Center; Robert Paige, Advanced Pain Center; Gordon A. Irving, Baylor College of Medicine; Carl E. Noe, Doctors Haynesworth, Noe and Bamberger; R. E. Nussbaum, The Institute for Pain; Martin S. Glore, The Institute for Pain; Joe G. Gonzales, Patrick S. Garman & Lawrence O. Shortas; Warm Springs & Baptist Rehabilitation Center Northwest; Duane Hill, Beaumont Bone & Joint Clinic; David Fletcher, The Neuro-Skeletal Center; Albert E. Sanders, Texas Orthopaedic Association; Steve Renfrow, The Brooks Agency; Thomas J. Lowry, Austin Ortho Clinic; American Society of Orthopaedic Physicians Assistants; Bernadette Williams; Bobbie Williams, Texas Orthopedic Physicians Assistants; C. C. Kell; Cyndi Arege; David W. Duffner, East Texas Orthopedics; David Fogle, Orthopaedic Associates of North Texas; Debra L. Loftier; Denton Bryant; Don McConnell, American Society of Orthopaedic Physician's Assistants, Inc.; Frankie Eastman; H. Lynn Rodgers, Jr., Orthopaedic Associates of North Texas; J.H. Garrett, Azalea Orthopedics & Sports Medicine Clinic; Jeffery G. Pearce; Joyce McClure; Kelly D. Irons; Kim A. Foreman, East Texas Orthopedics; M. Joseph Shepard, East Texas Orthopedics; Margaret Frankenfield; Mark W. Rodgers; Michael D. Adams, Orthopaedic Associates of North Texas; Michael Bowman; Terry Weber, Orthopaedic Associates of North Texas; Wade W. Whitmer; Andrew P. Kant, KSF Orthopaedic Center; Clark Hornbaker, Dallas Spine Group; Robert Peinert, Texas Orthopaedic Association; Mark R. Wilson, Physical Medicine and Rehabilitation; Richard K. Simpson, Jr., Baylor College of Medicine; James A. Ghadially, Orthopaedic Rehabilitation Association; James W. Simmons, Bone Joint Clinic; Dianne Ahlfinger, Cost Review Services; G. R. Kaestner, Texas Medical Association; Tom Mayer, PRIDE; Pam Beachley, Business Insurance Consultant; Melissa Hood, OccuSystems; Kenneth R. (Randy) Hart, Custom Care Bracing, L.L.C.; Thomas C. Thompson, Medical Device Manufacturers Association; Emil Cerullo, T-Bones and SW Spine Ortho Specialists; Guy Fogel, Medical Arts Clinic; Larry Tonn, Texas Medical Association; Edward A. Talmage, West Houston Doctor's Center; Mike Barber, Texas Orthopedic Administration Association; Bruce Hinkley; Michael T. Mccann, Texas Pain Medicine Consultants, P.L.L.C.; Randall Wolcott, Physical Medicine and Rehabilitation; James Tustin, Diagnostic Radiology Associates, L.L.P.; H. Dane Harris, Sr., Texas Association Business & Chambers of Commerce; Greg M. Gilbert, OccuSystems, Inc.; Brady G. Giesler; Denton Watamull; Donald L. Kramer, Pain Health Management Center; Gabor B. Racz, Texas Tech University Health Sciences Center; J. Lowell Haro, Pain Management Consultants, P.A.; J.H. Isern; J.L. White, Jr., Paincare at Presbyterian Hospital of Plano; James Diede, Department of Anesthesiology Texas Tech University; John C. Milani, OrthoNeuro Consultants, P.A.; Judi Bergett; Lawrence R. Gelman, Edmundo C. Canales; McAllen Pain Center, P.A.; Nicki D. Rimekrau; Martin Scott Glore, The Institute for Pain; Raka C. Gohel, Pain & Health Management Center; Robert R. Bulger, Southwest Pain Specialists; Thomas W. Grahm, Tyler Neurosurgical; and William Lynn Switzer, Neuromed.

Comments expressing overall support for the proposed rule were received from Tom Mayer of PRIDE; Michael D. Ciepiela; Richard L. Thomas, of the American Academy of Pain Management; Kyle Babick; Dianne Ahlfinger, of Cost Review Services; Jeanette Winfree; Thomas J. Lowry, of the Austin Orthopaedic Clinic; H. Dane Harris, Sr., of the Texas Association of Business; Jeff Hunter, of EBI Companies; Pam Beachley, of the Business Insurance Consumers Association of Texas; and Gary Gray, of the Texas Physical Therapy Association.

Comments expressing overall opposition to the proposed rule were received from Arie J. Bronkhorst, of Conner Brace Company, Inc.; Jeremiah J. Twomey; Gary A. Lamb, of Professional Orthotics Services; Roger Canard; Deborah P. Kelly, Scott B. Atha, of Neuromed; William Lynn Switzer, of Texas MedClinic; Bernard T. Swift, Jr.,; Steven F. Reeder; Richard Riley Constant; William C. Monell of Custom Care Bracing; Randy Hart; Edward A. Talmage; Robert R. Bulger, of Southwest Pain Specialists; Michael T. McCann, of Texas Pain Medicine Consultants, P.L.L.C.; Kenneth M. Alo, of Pain & Health Management; J.L. White, Jr. of Paincare at Presbyterian Hospital of Plano; R.E. Draeger, of Galveston Brace & Limb Company; Doug Meyers, of Meyers Brace & Limb Company, Inc.; Sam Sakowitz, of Texas Association of Medical Equipment Dealers; Robert Peinert, of the Texas Orthopaedic Association; Emil Cerullo, of T-BONES and Southwest Spine Ortho Specialists; and June Cheatham of the Neuroskeletal Center.

Comments suggesting revisions, but not expressing either overall opposition or support for the proposed rule were received from Cyndi Arege; Eric M. Goldberg; Melissa A. Hood, of Occusystems, Inc.; Terry Boucher, of the Texas Osteopathic Medical Association; Steve Renfrow, of The Brooks Agency; Richard W. Blide; William J. Barringer, of the University of Oklahoma; Jon B. Holmes, of Muilenberg Prosthetics, Inc.; Richard D. Rehm, of Occusystems, Inc.; Sam Sakowitz, of Allen Medical Equipment; Phillip A. Becker, A. I. Saheba, and Kraig Martin, of Gateway Industrial Medical Clinic; Rhonda Fellows, of EMPI, Inc.; Dwain R. Faso, of the American Board for Certification in Orthotics and Prosthetics, Inc.; Roy S. Marokus, Earl C. Hoffer, and Jacob Liebman, of Amarillo Industrial Health Center; Andrew P. Kant, of the KSF Orthopaedic Center; James M. McCoy of

Professional Prosthetics; Richard A. Peck of Acupuncture and Anesthetics Center; R.E. Nussbaum, of The Institute for Pain; Martin Scott Glore, The Institute for Pain; Tom LeTourneau, LeTourneau Lifelike Orthotics & Prosthetics; Debbie Gauthier, Allen Orthotics and Prosthetics, Inc.; Mike Allen, Certified Orthotic & Prosthetic Advocates, Inc.; Janet Gabbert, Associated Orthopedics & Sports Medicine; Kenneth R. (Randy) Hart, Custom Care Bracing, L.L.C.; Brady G. Giesler; John D. Martinez, San Antonio Orthotic; Lynda G. Marsh, Orthobionics, Inc.; J. Scott Hassell; P.J. Chandler; James Loftin, Dallas Pulmonary Association; W. John Ryan, Dallas Pulmonary Associates; Kallene Purl, Medical Development Company; M. Joseph Shepard, East Texas Orthopedics; Nicki D. Rimekrau; James C. Hughes, Austin Orthotics and Prosthetics, Inc.; Joyce McClure; Margaret Frankenfield; Kim A. Foreman, East Texas Orthopedics; Donald L. Kramer, Pain Health Management Center; Michael D. Adams, Orthopaedic Associates of North Texas; H. Lynn Rodgers, Jr., Orthopaedic Associates of North Texas; Terry Weber, Orthopaedic Associates of North Texas; David Fogle, Orthopaedic Associates of North Texas; Don E. Blanton; the American Society of Orthopaedic Physicians Assistants; Bobbie Williams, Texas Orthopedic Physicians Assistants; Don McConnell, American Society of Orthopaedic Physician's Assistants, Inc.; Frankie Eastman; J. H. Garrett, Azalea Orthopedics & Sports Medicine Clinic; Kelly D. Irons; Jeffery G. Pearce; Debra L. Loftier; Tarif Zaki, International Association of Orthotics and Prosthetics; J. H. Isern; Gary W. Prescott, Prescott's Orthotics; Dan Morgan, Texas Chapter of the American Academy of Orthotist and Prosthetists; David W. Duffner, East Texas Orthopedics; Gordon A. Irving, The University Center for Pain Medicine and Rehabilitation at Hermann, and Baylor College of Medicine; David Axelrad, Gordon A. Irving, and H. Martin Blacker, Baylor College of Medicine; C. M. Schade, the Center for Pain Control; C. C. Kell; Joe Jones; Mark Voit, Center for Orthotics of South Texas; John Harney; M. Gayle Glidewell; M. Cliff Cornette; Lawrence R. Gelman and Edmundo C. Canales, McAllen Pain Center, P.A.; Casey Cochran; Robert Paige, Advanced Pain Center; Thomas C. Thompson, Medical Device Manufacturers Association; Mark W. Rodgers; John C. Milani, OrthoNeuro Consultants, P.A.; Bernadette Williams; Pauline Ostermeyar; Jaelene Fayhee, Texas Workers' Compensation Insurance Fund; J. Lowell Haro, Pain Management Consultants, P.A.; Gail L. Chiasson, Orthofix; Denton Bryant; Peggy Lee, Capitol Anesthesiology Association; Raka C. Gohel, Pain & Health Management Center; Joe G. Gonzales, Patrick S. Garman & Lawrence O. Shortas; Warm Springs & Baptist Rehabilitation Center Northwest; Richard K. Simpson, Jr., Baylor College of Medicine; R. Sanford Kiser, Texas Pain Medicine Clinic; Gabor B. Racz, Texas Tech University Health Sciences Center; Kelly Kimbrough, IAOP; Bruce P. McClellan, Prosthetic-Orthotic Associates of East Texas, Inc.; Vicki Smith, Smith's Orthopedic shoes, Inc.; Bohn D. Allen, Texas Medical Association; Craig R. Dubois, Neural Logics, P.A.; Rudolph B. Becker, American Orthotic and Prosthetic Association; R. Dean Morgan, Footwear Consultants, Inc.; Thomas W. Grahm, Tyler Neurosurgical; Rick Ravel, Karavel Shoes Pedorthic Center; Wade W. Whitmer; James W. Simmons, Bone Joint Clinic; Kenneth Ray Hindman, The Walking Shop; Richard L. Amato, A-Tech Medical, Inc.; Lyn D. Gurkoff, Center for Pain Control; Walter Hoke, Foot Specialty Products by Sunnyland; Jeff Bloch, Bloch Orthotic Labs; Albert E. Sanders, Texas Orthopaedic Association; Sylvia Burns; William Millar, Millars Orthotic and Prosthetic Service; Michael Bowman; Troy Robinson, Prescription Management Services, Inc.; Gregory M. Gilbert, OccuSystems, Inc.; David Fletcher, The Neuro-Skeletal Center; Kim Doolan, Amputee Coalition of America; Charles Kennedy; C. Michael Schuch, American Academy of Orthotist & Prosthetists; Carol Lusk, Spine Care Associates of Tyler; Arie J. Bronkhorst, Certified Orthotic and Prosthetic Advocates; Mark E. Huff, Jr.; Michael Berkowitz, T-Bones; George Brooks, Rehab West Texas Rehabilitation Center; John Landino, MediQuip; Bruce Hinkley; Duane Hill, Beaumont Bone & Joint Clinic; Michael Barber, the Texas Orthopaedic Administrators Association; James Diede, Department of Anesthesiology Texas Tech University; Kenneth M. Alo, Pain & Health Management Center; G.R. Kaestner, Texas Medical Association; Larry Tonn, Texas Medical Association; Jeffrey N. Zink; and Judi Bergett;

Late comments from the following persons were received after the deadline for the comment period had passed: Mitch Presley (received November 22, 1995); Belinda Taylor, of interturbine (received November 27, 1995); Mike Wilson, of ELCOM (received November 27, 1995); Mike Allen, of the Certified Orthotic & Prosthetic Advocates, Inc. (received (November 29, 1995); Ralph G. Menard, M.D. (received November 27, 1995); Manju Nath, M.D. (received November 27, 1995); Sanford M. Silverman, M.D. (received December 3, 1995); James Cicero, of Hedgecock Artificial Limb Company (received December 11, 1995); Steve Farmer, of Home Medi-Care Equipment, Inc. (received January 2, 1996); and David A. Miller, of The MEDGROUP.

The commission held a public hearing on the proposed new Medical Fee Guideline on November 9, 1995. The following persons either testified and/or submitted written statements regarding the proposal: Troy Robinson, of Prescription Management Services, Inc.; Dr. Richard D. Rehm, of Occusystems, Inc.; C. M. Schade, M.D. of the Center for Pain Control; Lori Tappan-Zahn, of the Center for Pain Control; Greg M. Gilbert, of Occusystems, Inc.; Casey Cochran, D.O.; Judi Burgett, of Quest Medical Inc.; Tom Mayer, M.D., of PRIDE; Sam Sakowitz, of the Texas Association of Medical Equipment Dealers; Melissa Hood, of Occupational Health Centers; H. Martin Blacker, M.D., of Baylor College of Medicine; Terry Boucher, of the Texas Osteopathic Medical Association; Robert Peinert, M.D., of the Texas Orthpaedic Association; David Fletcher, M.D., of the Neuro-Skeletal Center, Inc.; Bruce Hinkley, M.D.; Emil Cerullo, of T-Bones and the Southwest Spine and Ortho Specialists; June Cheatham, of the Neuro-Skeletal Center, Duane Hill, of the Beaumont Bone and Joint Clinic; Michael Barber, representing Robert Peinert, M.D., and the Texas Orthopaedic Administrators Association; C.W. Kennedy; Clark A. Hornbaker, of the Dallas Spine Group; Phillip Osborne, M.D., of the Impairment and Disability Center of HealthSouth Corporation; Richard W. Blide, M.D.; James Diede, of the Texas Tech Department of Anesthesiology; Carol Lusk, of Spine Care Associates; Kenneth M. Alo, M.D., of the Pain and Health Management Center; G.R. Kaestner, M.D., of the Texas Medical Association; C. Michael Schuck; Gary Lamb; Kim Doolan, of the Amputee Coalition of America; Mike Allen, of Certified Orthopedic and Prosthetics Advocates; Debbie Gauthier; Larry L. Tonn, of the Texas Medical Association; Kyle Babick, Ph.D., of the Texas Psychological Association; Sanford Kiser, M.D.; Steve Renfrow, of the Smart Corporation; Richard Amato, of A-Tech Medical, Inc.; Gary Gray, of the Texas Physical Therapy Association; Jeffrey N. Zink; Mark E. Huff, Jr., M.D.; and Arie J. Bronkhorst, of C.O.P.A.

Summaries of the comments and commission responses are as follows.

The following comments were received regarding the Anesthesia Ground Rules.

COMMENT: (II)(B)(1)-(4). Two commenters objected to the use of only one modifier -45 in the Anesthesia Ground Rules because it would require the provider to note the number of concurrently supervised procedures. The commenters felt this was cumbersome and suggested modifiers -41 through -44 be reinstated in the anesthesia section as it existed in the 1991 Medical Fee Guideline Medical Fee Guideline and that the requirement for noting the number of concurrently directed procedures be deleted.

RESPONSE: The commission agrees. Modifiers -41 through -44 will be reinstated from the 1991 Medical Fee Guideline and the modifiers will replace the requirement of listing the number of concurrent procedures. This will result in an easier method which will still accurately identify the number of concurrent procedures. The Anesthesia Ground Rules sections (II)(B)(1)-(4) has been rewritten to state:

"(B) Concurrent Supervision (Modifiers "-41" to "-44"): When an anesthesiologist is directing the services of a CRNA, including pre- and post-operative evaluation and care, but is not personally administering the anesthesia, the total anesthesia value (TAV) of the anesthesia care for the patient shall not exceed the anesthesia TAV for that service, and one of the modifiers "-41" through "-44" shall be added to the procedure code. The anesthesiologist providing the medical direction shall remain on-site in or and shall extend medical direction to no more than four concurrent anesthetic procedures. Medical direction excludes simultaneous administration of anesthesia or performance of surgical services by the directing anesthesiologist. Reimbursement shall be as follows:

(1) when there is no other concurrently directed anesthetic, reimbursement for the anesthesiologist is 100% of the TAV. Use modifier "-41,";

(2) when there are two concurrently directed anesthetic procedures, reimbursement for the anesthesiologist is 90% of TAV. Use modifier "-42,";

(3) when there are three concurrently directed anesthetic procedures, reimbursement for the anesthesiologist is 85% of TAV. Use modifier "-43,";

(4) when there are four concurrently directed anesthetic procedures, reimbursement for the anesthesiologist is 80% of TAV. Use modifier "-44"."

The Anesthesia Ground Rule Modifier Section and General Instructions Section (IX)(D) have been rewritten to state:

" -41 Medical Direction of Nonphysician Anesthetist (CRNA) by and Anesthesiologist: Indicate by using this modifier when the services are performed by the nonphysician anesthetist (CRNA) who is supervised by an anesthesiologist. Refer to concurrent supervision guidelines in the general information section of the anesthesia section.

-42 Concurrent Supervision of Two Certified Registered Nurse Anesthetists (CRNA) by an Anesthesiologist: Indicated by using this modifier when the Anesthesiologist is directing two concurrent anesthetic procedures. The reimbursement shall be at 90% of the total anesthesia value.

-43 Concurrent Supervision of Three Certified Registered Nurse Anesthetists (CRNA) by an Anesthesiologist: Indicated by using this modifier when the Anesthesiologist is directing three concurrent anesthetic procedures. The reimbursement shall be at 85% of the total anesthesia value.

-44 Concurrent Supervision of Four Certified Registered Nurse Anesthetists (CRNA) by an Anesthesiologist: Indicated by using this modifier when the Anesthesiologist is directing four concurrent anesthetic procedures. The reimbursement shall be at 80% of the total anesthesia value."

COMMENT: (IV)(B). The commenter believed a greater unit value is needed for a lower valued anesthesia code when the patient is in a position other than supine or lithotomy. The commenter suggested that the provision in the 1991 Medical Fee Guideline be used because of the greater difficulty when a patient is in a position other than supine or lithotomy.

RESPONSE: The commission agrees that a greater unit value is needed for lower valued anesthesia codes when the patient is in a position other than supine or lithotomy. The American Society of Anesthesiologists (ASA) is a professional association that is partly responsible for the development of national medical practice parameters and is a nationally recognized authority for anesthesiologists. and Anesthesia Ground Rule section (IV)(B) is taken directly from the ASA, which states:

"Any procedure around the head, neck or shoulder girdle that requires field avoidance; or any procedure compromising the anesthesia administration (e.g., requiring a position other than supine or lithotomy) has a minimum basic value of 5.0 units regardless of any lesser basic value assigned to such procedure in this guideline. Modifier "-22" and documentation of procedure (DOP) are required."

COMMENT: (VI)(A)(2). The commenter requested a change in language to match HCFA-1500 billing instructions as follows: "For anesthesia, show the elapsed time (in minutes). Convert hours into minutes and enter the total minutes required." The commenter suggested that this instruction is standardized and more familiar to doctors and should be used instead of the billing information contained in the proposed Medical Fee Guideline.

RESPONSE: The commission agrees that anesthesia time should be billed in minutes but disagrees that a in but no change is needed. Anesthesia Ground Rules section (VI)(A), clearly requires the listing of anesthesia time in minutes. For those health care providers (HCP's) who are familiar with Medicare this will be a familiar practice.

The following comments were received regarding the durable medical equipment ground rules.

COMMENT: The commenters supported the adoption of the HCPCS coding system as it will provide the best means possible for HCPs to fully describe their services to others.

RESPONSE: The commission agrees.

COMMENT: (IV). A number of commenters objected to the requirement for documentation of procedure (DOP) for supplies. Many commenters felt that the HCPCS codes were specific enough to adequately describe supplies and that the documentation of procedure (DOP) requirement was unduly time consuming, costly and of questionable value. Even in the case where there is no HCPCS code, the general code 99070 can be used and a listing provided, not a documentation of procedure (DOP). Another commenter recommended use of a multiplier of 1.2 to be applied to the supply cost.

RESPONSE: The commission agrees in part. The requirement for documentation of procedure (DOP) has been eliminated. To develop a data base that meets the requirements in the Texas Labor Code, §413.007 the use of one code for millions of dollars in supplies would not give the commission the specifics mandated by the statute. No data is available to support the use of 1.2 as a fair multiplier in reimbursing all supplies. One way to determine fair and reasonable would be invoice price plus a percentage that allows for a reasonable realized profit margin for the particular supplier considering handling, storage, service, etc. DME Ground Rules Section (IV) has been rewritten to state:

"This document does not contain a specific MAR for the DME items. The DME items should be billed at the usual and customary rate of the DME provider, and the insurance carrier shall reimburse the DME provider at an amount pre-negotiated between the provider and carrier or, if there is no pre-negotiated amount, the fair and reasonable rate for the item described. Use the miscellaneous HCPCS code, E1399, when no other HCPCS code is present for the DME or supplies provided to the injured worker. When using E1399, a description of the unlisted equipment/supply is required."

COMMENT: The commenter stated converting DME "D" codes' reimbursements to HCPCS would be very easy. The commenter objected to the commission not gathering charge data over the last four years to establish MAR rates for HCPCS codes. The commenter felt reimbursement by documentation of procedure (DOP) for DME rather than a maximum allowable rate (MAR) or a fee schedule is totally unacceptable. The Medical Fee Guideline of 1991 adds stability for the suppliers. Prior to the Medical Fee Guideline going into effect the supplier had to negotiate with each carrier and sometimes with adjusters from the same carrier.

RESPONSE: The commission disagrees. The 337 "D" codes developed by the commission and contained in the 1991 Medical Fee Guideline, are not comprehensive and do not all directly correlate with the over 2,100 more detailed and descriptive HCPCS codes. The "D" codes from the 1991 Medical Fee Guideline were created for the purpose of tracking DME. However, only a limited number of "D" codes were created to track specific items. Other "D" codes are general and include numerous items. As a result, the current TWCC data regarding DME codes is inadequate at this time for the purpose of setting MAR for DME/supplies. The use of HCPCS codes will allow the commission to develop a database of charges which can be used to set MAR at a future date.

COMMENT: Introduction. Concern was expressed that the Durable Medical Equipment (DME) Ground Rules refer to the "A", "E" and "K" HCPCS codes but do not mention use of the "L" codes. The commenter questioned whether DME providers are allowed to bill using the "L" codes.

RESPONSE: The commission agrees. DME providers routinely provide certain types of equipment and supplies contained within the "L" codes. The DME section introduction has been revised to include "L" codes. The DME Ground Rules introduction now states:

"This document is intended to establish ground rules regarding the provision of Durable Medical Equipment (DME) and supplies rendered for compensable work-related injuries and illnesses. The coding system used is the HCPCS system. The specific HCPCS codes used in this section may include the "A" codes (A4190-A4649), the "E" codes, the "K" codes and the "L" codes. No other coding methodology shall be accepted for this program."

COMMENT: (VIII). The commenter questioned whether code 99070 should be used when the billed supply code is not listed in the HCPCS codes when billing for Orthotic and Prosthetics (O & P) and/or DME. Another commenter was concerned that although using Medicare coding (HCPCS) for equipment and supplies will define equipment and expand the number of items, it will also delete one of the most commonly used groups of equipment-bathroom safety items.

RESPONSE: The commission disagrees. Section (VIII) in the Durable Medical Equipment Ground Rules specifies that HCPCS code E1399 shall be used when no other HCPCS code is present for the supplies provided to the injured worker. This is the appropriate code to identify bathroom safety items or any other specific items not included in the HCPCS codes.

COMMENT: (I). Commenters objected to DME section (I), Selection of DME Providers. One commenter contended that as long as a payor or a carrier provides the exact same piece of equipment the doctor has prescribed, then the payor should have the ability to utilize any negotiated discounts or agreements they may have with other providers. Most patients will obtain DME from the provider recommended by the doctor. Another commenter felt that allowing the carrier to interfere with the contract between the DME provider and the injured worker would amount to tortious interference and would result in more disputes. Another commenter suggested adding a requirement that the claimant sign a request agreeing to any change of DME provider.

RESPONSE: The commission disagrees that a change to section (I) is needed. The injured worker has the right to select any DME provider. There is no prohibition against carriers utilizing negotiated discounts or agreements with the restrictions of the guideline. The carrier has no authority to change the provider chosen by the injured worker and consequently requiring a claimant to sign an agreement to change the DME provider is inappropriate. The commission's intent, by allowing insurance carrier and HCP recommendations to be made, is simply to make the injured worker aware of their options when facing a complex medical decision, not to encourage interference with DME contracts.

COMMENT: (II) Note. The commenter suggested rewriting the note in DME section (II), to read: "Note: Durable medical equipment purchases in excess of $600 per item or monthly rentals in excess of $300 per item." Per the new Preauthorization Rule, the commenter recommended that the commission delete (I) (10) as written and defer to (I)(9). This would state exactly what DME items require preauthorization.

RESPONSE: The commission disagrees. The commission's Preauthorization Rule is in the process of revision. The provisions which will be adopted in the rule are not known. Including these specifics regarding the Preauthorization Rule could result in conflict between the rules. Preauthorization issues are appropriately dealt with in the Preauthorization Rule not in the Medical Fee Guideline.

COMMENT: (VI)(B). The commenter recommended deleting the phrase "unless otherwise specified" from section (VI)(B).

RESPONSE: The commission disagrees. Situations exist where monthly rentals are not warranted and this phrase gives the necessary flexibility to the rule to address these situations.

COMMENT: (VII). The commenter requested that the injured worker or carrier be given some responsibility to either assist the DME provider in obtaining the return of rental equipment no longer needed or exchanged or pay for the equipment purchase, possibly pro-rating certain rental payments toward the purchase price. Currently, the provider's ability to bill claimants is limited by law and many claimants object to returning items that help reduce pain. One commenter supported the idea of promoting warranties but pointed out that the manufacturer does not cover breakage due to neglect such as being dropped in a toilet and this leaves the DME provider with the cost.

RESPONSE: The commission agrees that promoting warranties does encourage providers to provide higher quality equipment. It is the insurance carrier's responsibility to pay for the reasonable and necessary medical benefits related to the compensable injury. However the commission disagrees that actively pursuing the return of equipment or paying for equipment that is not medically reasonable is part of this responsibility. Assumption of the business risk of unreturned equipment is part of the provider's costs and will be accounted for, along with other business costs, in the provider's usual, customary and reasonable (UCR) billing. Because DME equipment is to be reimbursed at a fair and reasonable rate these costs will be considered in the reimbursement.

COMMENT: The commenter suggested that a monthly MAR be set for DME supplies with a provision for requesting a greater than MAR reimbursement through documentation of procedure (DOP).

RESPONSE: The commission disagrees. At this time the commission is in a data collection stage to develop MARs for DME and no other reimbursements will be set until sufficient data is collected to accurately determine a reimbursement for DME. Until that time, DME providers should bill their usual and customary rate and will be reimbursed a fair and reasonable fee. Collection of data from actual billing will allow the commission to set statistically valid reimbursement rates that are Texas specific. Reliance on small samples of retail prices supplied by DME providers is not advisable because it could easily skew reimbursement rates either unfairly high or low.

COMMENT: (IX)(A). The commenter suggested that section (IX)(A) be rewritten as follows: "A prescription must accompany initial claims for the rental of DME. A statement of medical necessity and a prescription is necessary for the purchase of DME. Any verbal order given by the treating doctor is acceptable when accompanied by a statement of medical necessity when billing for the DME equipment."

RESPONSE: The commission disagrees with the suggestion to rewrite Section (IX)(A) of the DME Ground Rules to drop the requirement for a statement of medical necessity for rental of DME. The statement of medical necessity ensures the health care provider (HCP) has documented the justification for rental of DME.

COMMENT: (IX)(A). The commenter objected to the wording in DME section (IX) (A), stating that it was biased toward licensed HCPs providing DME because they could do so without an immediate follow-up signed prescription from the ordering physician.

RESPONSE: The commission agrees. It is not the commission's intention to limit recommendation of equipment or supplies only to treating doctors. Not all DME requires a prescription, sometimes just an order is sufficient. DME Ground Rule section (IX)(A) has been rewritten to state:

"A statement of medical necessity, along with the order or prescription appropriate for the equipment/supplies shall accompany initial claims for the rental or purchase of DME. Any verbal order given by the doctor to the DME provider shall be followed by a written prescription or order prior to billing for the DME equipment/supplies."

COMMENT: (IX)(C). DME section (IX)(C) states that the information required to be provided by section (IX)(B) must be provided by the claimant or the claimant's representative. The commenter questioned whether a claimant can provide the medical information and suggested deleting (IX)(C).

RESPONSE: The commission agrees that the injured worker may in some circumstances, not have access to this information. Section (IX)(C) has been deleted and section (IX)(D) has been changed to (IX)(C).

COMMENT: (IX)(D). The commenters were concerned that having no MAR for supplies will result in suppliers having to negotiate prices for every item they rent or sell. Another commenter questioned who would determine what was "reasonable." Another commenter suggested that when the HCPCS code for a claim either does not appear on the Schedule of Maximum Allowances or is designated as documentation of procedure (DOP), the carrier should reimburse the DME provider the fair and reasonable rate for the item described.

RESPONSE: The commission disagrees that any provision contained in the Medical Fee Guideline requires suppliers to negotiate prices for every item they sell or rent. However, if the provider and carrier have a negotiated fee for an item, that fee should be the reimbursement. The Commission agrees that DME should be reimbursed at reasonable rates and recognizes the concerns of DME providers that without a MAR for DME items they cannot be sure that reimbursement will even cover their costs. To address this concern, the Commission has added a definition of fair and reasonable reimbursement for DME which establishes the reimbursement at the fees set for the "D" codes in the 1991 Medical Fee Guideline. This addition is an interim measure. The Commission has instructed its staff to present a recommendation for setting fair and reasonable rates for HCPCS codes on a cost-plus-a-percentage-of-cost basis for possible adoption until data is available to set MARs for individual HCPCS codes. Section (IX)(D) (now (IX)(C)) has been revised as follows:

"The provider shall use the HCFA-1500 Form for billing. Invoices should be billed at the provider's usual and customary rate. Reimbursement shall be an amount pre-negotiated between the provider and

carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the "D" codes in the 1991 Medical Fee Guideline."

COMMENT: (IX)(D)(2). The commenter rewrote the section, deleting (IX)(D)(2) of the DME Ground Rules.

RESPONSE: The commission disagrees. Section (IX)(D)(2) allows carriers to pay pre-negotiated rates. The Medical Fee Guideline does not restrict carriers from contracting with health care providers or suppliers because such contracts support the goal of cost control in accordance with the Texas Labor Code, §413.011.

COMMENT: (III). The commenter suggested modification of the Durable Medical Equipment (DME) Ground Rules to promote the elimination of low-cost, poor quality and ineffective devices and discourage their use on injured workers. Another commenter recommended revision of DME section (III) to read:

"The injured worker shall be provided the highest quality of supplies\equipment available for the treatment of the compensable work-related injuries and illnesses. All billings must state on the billing form, or stapled to the billing form, the manufacturer's name and the model or catalog number of the equipment provided."

RESPONSE: The commission disagrees. The DME Ground Rules as written do promote high quality DME for injured workers. A statement of medical necessity serves as the justification for DME/supplies dispensed by the DME provider. This is consistent with the language in the DME Ground Rules. DOP serves as the justification for doctors dispensing DME/supplies to the patient within their office. For consistency with (X)(A) and to prevent disputes as to what the highest quality equipment may be, section (III) "Quality" was rewritten to state:

"The reimbursement for DME in this guideline is based upon the presumption that the injured worker is being provided high quality supplies/equipment for the treatment of compensable work related injuries and illnesses."

This statement expresses the commission's belief that the provision of high quality DME is the mutual responsibility of all parties involved including the health care provider (HCP), the DME supplier and the carrier. In addition, the commission is not the appropriate authority to make determinations regarding equipment quality. The manufacturer's name and model number or catalog number is not necessary on the billing because the HCFA 1500 form combined with HCPCS codes will add all necessary information for claim processing.

COMMENT: (X)(A) and (III). A number of commenters expressed concerns regarding provisions dealing with the quality of TENS units. Another commenter felt that the DME Ground Rules section (X)(A) was impossible and impractical stating that: "lumping all electrical stimulator units together is like lumping all therapies together, all surgeries together, or all chiropractors together." One commenter recommended that the following language be substituted for section (X)(A) of the DME ground rules:

"Only billings for TENS devices which meet the following restrictions will be accepted for reimbursement. The unit must:

(a) follow all necessary FDA good manufacturing practices (GMP) and labeling requirements

(b) have a registered/approved 510K number

(c) comply with all applicable standards (Sections 1 through 4) as set forth by the Association for the Advancement of Medical Instrumentation (AAMI) and is registered/filed with the Texas Workers' Compensation Commission (TWCC)

(d) all units with supporting documentation (a, b, and c) must be on file and registered with the Texas Workers' Compensation Commission (TWCC)

(e) Texas Workers' Compensation Commission (TWCC) will provide a list of all companies that have complied with Section (X), (A)."

Concern was also expressed regarding the requirement that a 510K FDA number for TENS devices be provided with one concern being that manufacturers would not want to release the number if it included release of proprietary information regarding the device. Another commenter felt that provision of the 510K number was reasonable. One commenter pointed out that AAMI/ANSI sets standards for TENS units only and that the phrase "all electrical stimulation units-nerve, muscle, etc." should be deleted from (X)(A) and redrafted to refer to TENS only. Commenters supported the requirement that TENS units meet AAMI/ANSI standards, but one pointed out that some companies misrepresent compliance with standards. Another commenter stated AAMI/ANSI is a voluntary standard that can be used as a resource, but the ultimate decision as to product safety and efficacy must take into account the specifics of its utilization and, of course, cost-benefit considerations.

RESPONSE: The commission agrees that requiring a 510K number for TENS devices is not necessary. The 510K number does not release operational schematics or proprietary information needed for the subsequent copying and manufacture of TENS units as suggested by commenter. In addition, it is not an assurance of quality or effectiveness. A 510K number denotes that an application has been filed with the FDA and is necessary for product marketing within the United States. Because of these limitations, requiring the 510K number for TENS units does not provide useful quality assurance and this requirement has been deleted. The commission disagrees that TWCC should be involved with registering or maintaining documentation on TENS devices because the commission does not have the resources or expertise to perform such a function.

The commission agrees that AAMI/ANSI standards should be met by TENS units. Although manufacturers may misrepresent having met AAMI/ANSI standards, verification of compliance can be obtained by contacting the Health and Human Services, Small Devices and Radiological Health Division. The commission's ultimate goal is to ensure the provision of high quality TENS units. Commission research indicates that AAMI/ANSI standards are the standards adopted by the FDA in their approval process for TENS units. Given the information provided, AAMI/ANSI standards are the most viable method available at this time for assuring quality and safety.

The commission agrees with the commenter who suggested that section (X) should only apply to TENS. The inclusion of the statement "all electrical stimulation units" encompasses a wide range of devices that may not be applicable to AAMI/ANSI standards. Because of this information and information regarding 510K numbers and AAMI/ANSI standards, section (X)(A) has been rewritten to state:

"TENS Units.

TENS units should be of a high quality and should meet the standards established by the American National Standard Association for the Advancement of Medical Instrumentation."

For consistency and to prevent possible disputes as to what the highest quality equipment may be, section (III) has been rewritten to state:

"The reimbursement for DME in this fee guideline is based upon the presumption that the injured worker is being provided high quality supplies/equipment for the treatment of the compensable work-related injuries and illnesses."

COMMENT: (X) The commenters questioned whether the TENS unit must be purchased after a 30-day rental period or if the patient can rent for another 30 days and requested clarification. Another commenter objected to limiting the TENS rentals to one month. This requires preauthorization of every monthly rental and the purchase. In addition, it requires the prescribing doctor to re-evaluate the necessity and appropriateness of the continued use of the equipment only 30 days after ordering it. Another commenter suggested modification of section (X)(C)(1) to include referred doctors and to specify the type of documentation necessary and the type of "unit" referred to.

One commenter also suggested that the wording of DME section (X)(C)(2) be changed as follows: purchase price should include: unit, two sets of lead wires for a two channel unit, instruction booklet, warranty information, case, two rechargeable batteries and charger, (if rechargeable 9-volt batteries are required, only 8.4 volt batteries or better are acceptable), or if unit requires the use of only alkaline batteries, replace the recharger and two rechargeable batteries with sufficient alkaline high power batteries to power the unit for minimum of one month and notice to the carrier detailing the estimated number of alkaline batteries required for one month. The commenter felt that DME section (X)(C)(3) should be clarified to state: the first month's rent applies to the purchase price-if paid.

Two commenters felt it was unacceptable to place limits on items that

are medically necessary. Electrodes on a TENS unit must be replaced approximately every ten days. If more electrodes than a normal month's usage are required, commenters suggested the medical necessity be documented and suggested using DOP for increased use of supplies.

RESPONSE: The commission agrees that the DME Ground Rules Section (X) requires clarification. Section (VI) should apply to all rentals including TENS. The specific limitation for TENS in Section (X)(B) is unnecessary and has been eliminated. Section (X)(C)(1) has been deleted also because it limited the rental period for TENS units. Some items suggested for inclusion in Section (X) were not incorporated into Section (X)(C)(2) because some of the items are accessories which do not affect quality and may not be included in all TENS purchases. Staff agrees that more electrodes may be necessary than what is recommended for reimbursement of TENS supplies, therefore additional reimbursement is allowed with documentation of medical necessity for additional electrodes. Section (X) of the DME Ground Rules has been rewritten to state:

"(X) TENS Units.

(A) TENS units, should be of a high quality and should meet the standards established by the American National Standard Association for the Advancement of Medical Instrumentation.

(B) Purchase:

The purchase price shall include:

(1) unit lead wires for a channel unit,

(2) instruction booklet,

(3) warranty information,

(4) two batteries (either replaceable or rechargeable), and

(5) a battery charger (for rechargeable batteries).

(C) All TENS supplies shall be billed with code E1399 and shall be itemized. Reimbursement shall not exceed the maximum allowable per month ($85) except in those unusual cases where additional supplies are medically necessary, adequate documentation describing the situation shall be provided. No additional supply codes shall be reimbursed in addition to E1399."

In addition, for consistency, Section (VI)(D) has been rewritten as follows and the second sentence has been deleted because only the first month's rental is applied to the purchase price.

"The first month's rent applies to the purchase price if the rental was reimbursed."

COMMENT: (IV), (VIII), (IX)(D) and (X). The commenter suggested adding a new section (X) of the DME Ground Rules to reimburse DME providers at each supplier's usual, customary and reasonable (UCR) charge. The intent would be to establish a history of true UCR billing as practiced by the supplier. The same commenter suggested with this rewrite, section (IX)(D) should be deleted. This commenter also suggested section (VIII) be revised to read:

COMMENT: (VI)(B). The commenter recommended deleting the phrase "unless otherwise specified" from section (VI)(B).

RESPONSE: The commission disagrees. Situations exist where monthly rentals are not warranted and this phrase gives the necessary flexibility to the rule to address these situations.

COMMENT: (VII). The commenter requested that the injured worker or carrier be given some responsibility to either assist the DME provider in obtaining the return of rental equipment no longer needed or exchanged or pay for the equipment purchase, possibly pro-rating certain rental payments toward the purchase price. Currently, the provider's ability to bill claimants is limited by law and many claimants object to returning items that help reduce pain. One commenter supported the idea of promoting warranties but pointed out that the manufacturer does not cover breakage due to neglect such as being dropped in a toilet and this leaves the DME provider with the cost.

RESPONSE: The commission agrees that promoting warranties does encourage providers to provide higher quality equipment. It is the insurance carrier's responsibility to pay for the reasonable and necessary medical benefits related to the compensable injury. However the commission disagrees that actively pursuing the return of equipment or paying for equipment that is not medically reasonable is part of this responsibility. Assumption of the business risk of unreturned equipment is part of the provider's costs and will be accounted for, along with other business costs, in the provider's usual, customary and reasonable (UCR) billing. Because DME equipment is to be reimbursed at a fair and reasonable rate these costs will be considered in the reimbursement.

COMMENT: The commenter suggested that a monthly MAR be set for DME supplies with a provision for requesting a greater than MAR reimbursement through documentation of procedure (DOP).

RESPONSE: The commission disagrees. At this time the commission is in a data collection stage to develop MARs for DME and no other reimbursements will be set until sufficient data is collected to accurately determine a reimbursement for DME. Until that time, DME providers should bill their usual and customary rate and will be reimbursed a fair and reasonable fee. Collection of data from actual billing will allow the commission to set statistically valid reimbursement rates that are Texas specific. Reliance on small samples of retail prices supplied by DME providers is not advisable because it could easily skew reimbursement rates either unfairly high or low.

COMMENT: (IX)(A). The commenter suggested that section (IX)(A) be rewritten as follows: "A prescription must accompany initial claims for the rental of DME. A statement of medical necessity and a prescription is necessary for the purchase of DME. Any verbal order given by the treating doctor is acceptable when accompanied by a statement of medical necessity when billing for the DME equipment."

RESPONSE: The commission disagrees with the suggestion to rewrite Section (IX)(A) of the DME Ground Rules to drop the requirement for a statement of medical necessity for rental of DME. The statement of medical necessity ensures the health care provider (HCP) has documented the justification for rental of DME.

COMMENT: (IX)(A). The commenter objected to the wording in DME section (IX) (A), stating that it was biased toward licensed HCPs providing DME because they could do so without an immediate follow-up signed prescription from the ordering physician.

RESPONSE: The commission agrees. It is not the commission's intention to limit recommendation of equipment or supplies only to treating doctors. Not all DME requires a prescription, sometimes just an order is sufficient. DME Ground Rule section (IX)(A) has been rewritten to state:

"A statement of medical necessity, along with the order or prescription appropriate for the equipment/supplies shall accompany initial claims for the rental or purchase of DME. Any verbal order given by the doctor to the DME provider shall be followed by a written prescription or order prior to billing for the DME equipment/supplies."

COMMENT: (IX)(C). DME section (IX)(C) states that the information required to be provided by section (IX)(B) must be provided by the claimant or the claimant's representative. The commenter questioned whether a claimant can provide the medical information and suggested deleting (IX)(C).

RESPONSE: The commission agrees that the injured worker may in some circumstances, not have access to this information. Section (IX)(C) has been deleted and section (IX)(D) has been changed to (IX)(C).

COMMENT: (IX)(D). The commenters were concerned that having no MAR for supplies will result in suppliers having to negotiate prices for every item they rent or sell. Another commenter questioned who would determine what was "reasonable." Another commenter suggested that when the HCPCS code for a claim either does not appear on the Schedule of Maximum Allowances or is designated as documentation of procedure (DOP), the carrier should reimburse the DME provider the fair and reasonable rate for the item described.

RESPONSE: The commission disagrees that any provision contained in the Medical Fee Guideline requires suppliers to negotiate prices for every item they sell or rent. However, if the provider and carrier have a negotiated fee for an item, that fee should be the reimbursement. The Commission agrees that DME should be reimbursed at reasonable rates and recognizes the concerns of DME providers that without a MAR for DME items they cannot be sure that reimbursement will even

cover their costs. To address this concern, the Commission has added a definition of fair and reasonable reimbursement for DME which establishes the reimbursement at the fees set for the "D" codes in the 1991 Medical Fee Guideline. This addition is an interim measure. The Commission has instructed its staff to present a recommendation for setting fair and reasonable rates for HCPCS codes on a cost-plus-a-percentage-of-cost basis for possible adoption until data is available to set MARs for individual HCPCS codes. Section (IX)(D) (now (IX)(C)) has been revised as follows:

"The provider shall use the HCFA-1500 Form for billing. Invoices should be billed at the provider's usual and customary rate. Reimbursement shall be an amount pre-negotiated between the provider and carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the "D" codes in the 1991 Medical Fee Guideline."

COMMENT: (IX)(D)(2). The commenter rewrote the section, deleting (IX)(D)(2) of the DME Ground Rules.

RESPONSE: The commission disagrees. Section (IX)(D)(2) allows carriers to pay pre-negotiated rates. The Medical Fee Guideline does not restrict carriers from contracting with health care providers or suppliers because such contracts support the goal of cost control in accordance with the Texas Labor Code, §413.011.

COMMENT: (III). The commenter suggested modification of the Durable Medical Equipment (DME) Ground Rules to promote the elimination of low-cost, poor quality and ineffective devices and discourage their use on injured workers. Another commenter recommended revision of DME section (III) to read:

"The injured worker shall be provided the highest quality of supplies\equipment available for the treatment of the compensable work-related injuries and illnesses. All billings must state on the billing form, or stapled to the billing form, the manufacturer's name and the model or catalog number of the equipment provided."

RESPONSE: The commission disagrees. The DME Ground Rules as written do promote high quality DME for injured workers. A statement of medical necessity serves as the justification for DME/supplies dispensed by the DME provider. This is consistent with the language in the DME Ground Rules. DOP serves as the justification for doctors dispensing DME/supplies to the patient within their office. For consistency with (X)(A) and to prevent disputes as to what the highest quality equipment may be, section (III) "Quality" was rewritten to state:

"The reimbursement for DME in this guideline is based upon the presumption that the injured worker is being provided high quality supplies/equipment for the treatment of compensable work related injuries and illnesses."

This statement expresses the commission's belief that the provision of high quality DME is the mutual responsibility of all parties involved including the health care provider (HCP), the DME supplier and the carrier. In addition, the commission is not the appropriate authority to make determinations regarding equipment quality. The manufacturer's name and model number or catalog number is not necessary on the billing because the HCFA 1500 form combined with HCPCS codes will add all necessary information for claim processing.

COMMENT: (X)(A) and (III). A number of commenters expressed concerns regarding provisions dealing with the quality of TENS units. Another commenter felt that the DME Ground Rules section (X)(A) was impossible and impractical stating that: "lumping all electrical stimulator units together is like lumping all therapies together, all surgeries together, or all chiropractors together." One commenter recommended that the following language be substituted for section (X)(A) of the DME ground rules:

"Only billings for TENS devices which meet the following restrictions will be accepted for reimbursement. The unit must:

(a) follow all necessary FDA good manufacturing practices (GMP) and labeling requirements

(b) have a registered/approved 510K number

(c) comply with all applicable standards (Sections 1 through 4) as set forth by the Association for the Advancement of Medical Instrumentation (AAMI) and is registered/filed with the Texas Workers' Compensation Commission (TWCC)

(d) all units with supporting documentation (a, b, and c) must be on file and registered with the Texas Workers' Compensation Commission (TWCC)

(e) Texas Workers' Compensation Commission (TWCC) will provide a list of all companies that have complied with Section (X), (A)."

Concern was also expressed regarding the requirement that a 510K FDA number for TENS devices be provided with one concern being that manufacturers would not want to release the number if it included release of proprietary information regarding the device. Another commenter felt that provision of the 510K number was reasonable. One commenter pointed out that AAMI/ANSI sets standards for TENS units only and that the phrase "all electrical stimulation units–nerve, muscle, etc." should be deleted from (X)(A) and redrafted to refer to TENS only. Commenters supported the requirement that TENS units meet AAMI/ANSI standards, but one pointed out that some companies misrepresent compliance with standards. Another commenter stated AAMI/ANSI is a voluntary standard that can be used as a resource, but the ultimate decision as to product safety and efficacy must take into account the specifics of its utilization and, of course, cost-benefit considerations.

RESPONSE: The commission agrees that requiring a 510K number for TENS devices is not necessary. The 510K number does not release operational schematics or proprietary information needed for the subsequent copying and manufacture of TENS units as suggested by commenter. In addition, it is not an assurance of quality or effectiveness. A 510K number denotes that an application has been filed with the FDA and is necessary for product marketing within the United States. Because of these limitations, requiring the 510K number for TENS units does not provide useful quality assurance and this requirement has been deleted. The commission disagrees that TWCC should be involved with registering or maintaining documentation on TENS devices because the commission does not have the resources or expertise to perform such a function.

The commission agrees that AAMI/ANSI standards should be met by TENS units. Although manufacturers may misrepresent having met AAMI/ANSI standards, verification of compliance can be obtained by contacting the Health and Human Services, Small Devices and Radiological Health Division. The commission's ultimate goal is to ensure the provision of high quality TENS units. Commission research indicates that AAMI/ANSI standards are the standards adopted by the FDA in their approval process for TENS units. Given the information provided, AAMI/ANSI standards are the most viable method available at this time for assuring quality and safety.

The commission agrees with the commenter who suggested that section (X) should only apply to TENS. The inclusion of the statement "all electrical stimulation units" encompasses a wide range of devices that may not be applicable to AAMI/ANSI standards. Because of this information and information regarding 510K numbers and AAMI/ANSI standards, section (X)(A) has been rewritten to state:

"TENS Units.

TENS units should be of a high quality and should meet the standards established by the American National Standard Association for the Advancement of Medical Instrumentation."

For consistency and to prevent possible disputes as to what the highest quality equipment may be, section (III) has been rewritten to state:

"The reimbursement for DME in this fee guideline is based upon the presumption that the injured worker is being provided high quality supplies/equipment for the treatment of the compensable work-related injuries and illnesses."

COMMENT: (X) The commenters questioned whether the TENS unit must be purchased after a 30-day rental period or if the patient can rent for another 30 days and requested clarification. Another commenter objected to limiting the TENS rentals to one month. This requires preauthorization of every monthly rental and the purchase. In addition, it requires the prescribing doctor to re-evaluate the necessity and appropriateness of the continued use of the equipment only 30 days after ordering it. Another commenter suggested modification of section (X)(C)(1) to include referred doctors and to specify the type of documentation necessary and the type of "unit" referred to.

One commenter also suggested that the wording of DME section (X)(C)(2) be changed as follows: purchase price should include: unit, two sets of lead wires for a two channel unit, instruction booklet, warranty information, case, two rechargeable batteries and charger, (if rechargeable 9-volt batteries are required, only 8.4 volt batteries or better are acceptable), or if unit requires the use of only alkaline batteries, replace the recharger and two rechargeable batteries with sufficient alkaline high power batteries to power the unit for minimum of one month and notice to the carrier detailing the estimated number of alkaline batteries required for one month. The commenter felt that DME section (X)(C)(3) should be clarified to state: the first month's rent applies to the purchase price-if paid.

Two commenters felt it was unacceptable to place limits on items that are medically necessary. Electrodes on a TENS unit must be replaced approximately every ten days. If more electrodes than a normal month's usage are required, commenters suggested the medical necessity be documented and suggested using DOP for increased use of supplies.

RESPONSE: The commission agrees that the DME Ground Rules Section (X) requires clarification. Section (VI) should apply to all rentals including TENS. The specific limitation for TENS in Section (X)(B) is unnecessary and has been eliminated. Section (X)(C)(1) has been deleted also because it limited the rental period for TENS units. Some items suggested for inclusion in Section (X) were not incorporated into Section (X)(C)(2) because some of the items are accessories which do not affect quality and may not be included in all TENS purchases. Staff agrees that more electrodes may be necessary than what is recommended for reimbursement of TENS supplies, therefore additional reimbursement is allowed with documentation of medical necessity for additional electrodes. Section (X) of the DME Ground Rules has been rewritten to state:

"(X) TENS Units.

(A) TENS units, should be of a high quality and should meet the standards established by the American National Standard Association for the Advancement of Medical Instrumentation.

(B) Purchase:

The purchase price shall include:

(1) unit lead wires for a channel unit,

(2) instruction booklet,

(3) warranty information,

(4) two) batteries (either replaceable or rechargeable), and (5) a battery charger (for rechargeable batteries).

(C) All TENS supplies shall be billed with code E1399 and shall be itemized. Reimbursement shall not exceed the maximum allowable per month ($85) except in those unusual cases where additional supplies are medically necessary, adequate documentation describing the situation shall be provided. No additional supply codes shall be reimbursed in addition to E1399."

In addition, for consistency, Section (VI)(D) has been rewritten as follows and the second sentence has been deleted because only the first month's rental is applied to the purchase price.

"The first month's rent applies to the purchase price if the rental was reimbursed."

COMMENT: (IV), (VIII), (IX)(D) and (X). The commenter suggested adding a new section (X) of the DME Ground Rules to reimburse DME providers at each supplier's usual, customary and reasonable (UCR) charge. The intent would be to establish a history of true UCR billing as practiced by the supplier. The same commenter suggested with this rewrite, section (IX)(D) should be deleted. This commenter also suggested section (VIII) be revised to read:

"Reimbursement shall not exceed the usual and customary rate of the provider as established the billing history."

The same commenter suggested eliminating the reference to MARs in section (IV) and rewriting the section as follows:

"DME items shall be (not "should") billed at the usual and customary rate of the provider, and shall be reimbursed by the carrier the lesser of: the provider's usual and customary rate, as indicated by the previous 12 months billing of the provider for similar DME non-listed items and documentation of procedure (DOP) items, or, a negotiated amount between the provider and the carrier."

RESPONSE: The commission agrees in part. Reference to MARs, in sections (IV) and (VIII) have been deleted because there are no MARs set for DME. Section (IV) has been rewritten as follows: "This document does not contain a specific MAR for the DME items. The DME items should be billed at the usual and customary rate of the DME provider, and the insurance carrier shall reimburse the DME provider at an amount pre-negotiated between the provider and carrier or, if there is no pre-negotiated amount, the fair and reasonable rate for the item described. Use the miscellaneous HCPCS code, E1399, when no other HCPCS code is present for the DME or supplies provided to the injured worker. When using E1399, a description of the unlisted equipment/supply is required." and section (VIII) has been rewritten to state:

"Supplies shall be requested by, or on behalf of, the injured worker. DME supplies shall be itemized and billed under the appropriate HCPCS code. Use the miscellaneous HCPCS code, E1399, when no other HCPCS code is present for the supplies provided to the injured worker. Documentation for distribution of supplies shall be provided when requested by the Texas Workers' Compensation Commission (TWCC)."

The commission disagrees with the suggestion that an individual provider's history of billing should be used to establish the provider's reimbursement. To allow this method of determining a provider's reimbursement puts the provider in control of the amount to be reimbursed without consideration of what is fair and reasonable. Both standards must be included to achieve the goals of the Medical Fee Guideline. When there is enough data available to determine a MAR for DME, specific amounts can be included. No revisions to sections (X) or (IX)(D) are necessary as a result of this comment.

COMMENT: (V). The commenters suggested that section (V) be reworded to read: "Storage, shipping, handling, etc. are included in the MAR and will not be reimbursed separately." The other commenter suggested this wording to be: "Storage, shipping and handling, etc. shall be reimbursed according to usual and customary as evidenced by the history of the charges detailed in item (X) of the DME Ground Rules."

RESPONSE: The commission disagrees with including a reference to MAR in Section (V), because no MAR is being established for DME. The commission also disagrees that reimbursements should be based solely on the provider's usual and customary charge for the reasons discussed in the previous response. The commission agrees that clarification would be helpful and has rewritten Section (V) of the DME Ground Rules as follows:

"Storage, shipping, handling, etc. are included in the provider's usual and customary charge and shall not be reimbursed separately."

COMMENT: (II). The commenter expressed the opinion that stating "in a noninstitutional setting" in section (II) denies the use of DME or supplies to an inpatient at any facility.

RESPONSE: The commission agrees in part. This section has been rewritten to clarify when the DME provider can receive reimbursement for DME and supplies in an institutional setting. For consistency with a previous revision, the limitation of only the "treating" doctor has been deleted. DME Ground Rules section (II) has been rewritten to state:

"The carrier shall reimburse for the purchase or rental of DME and supplies provided that all such items are approved by the injured worker's doctor. The injured worker retains the right of choice of DME suppliers. In acute care hospitals, supplies/equipment are included in the per diem rate. In institutional settings not covered by a guideline, fair and reasonable rates apply."

COMMENT: (VI)(A) and (VI)(D). Commenter felt that subsection (VI)(D) nullified (A) especially if the DME item requires preauthorization.

RESPONSE: The commission agrees in part. The last sentence of Section (VI) (D) has been deleted as indicated previously. Section (VI)(A) pertains to required medical justification for extension of rental.

COMMENT: (VI)(A). The commenter suggested that section (VI) should allow the referred and\or ordering doctor to authorize rentals beyond 60 days, since it all must be approved by the treating physician anyway.

RESPONSE: The commission agrees. Section (VI)(A) has been revised to state:

"Rental fees are applicable for short-term utilization up to 60 days, unless the doctor provides medical justification for an extension beyond the initial 60 days."

COMMENT: (VII)(B). The commenter suggested "all the DME purchased from the provider" be added to (VII)(B) to clarify that the carrier is responsible only for DME purchased (not rented) by the carrier.

RESPONSE: The commission agrees. Section (VII)(B) has been rewritten to state:

"The repair or maintenance of all DME purchased from the provider is the responsibility of the insurance carrier, subject to warranty provisions."

COMMENT: (X). The commenter objected to the requirement that the prescribing doctor document the need for purchase or continued use of DME, stating physical therapists and occupational therapists working with the claimant should be able to evaluate the patient's progress with TENS, etc. TENS is listed as a modality in their licensing and practice act. The questions listed in the guideline are basic, and do nothing to establish medical necessity, only adding to the excessive paperwork already burdening the physicians.

RESPONSE: The commission agrees that physical and occupational therapists are able to evaluate a patient's progress with a TENS unit. The commission disagrees that this evaluation can be used to justify continued use of TENS thereby justifying the purchase of the unit. Section (X)(C)(1) has been deleted as discussed previously, but sections (II) and (VI) require approval and justification of the doctor for purchase and/or rental of TENS.

COMMENT: (XI). The commenter suggested that provisions should be outlined for different types of continuous passive motion equipment. (e.g. the McKenzie type CPM table for the lumbar spine. It must be delivered by two men, case managed a minimum of once a week at the patient's home, and at the present rate of reimbursement the provider cannot maintain profitability.)

RESPONSE: The commission agrees. The maximum allowable rental per month has been removed for CPM equipment reimbursement. In order to collect more definitive data relative to the different types of CPM devices, the following modifiers have been added: -UE Upper Extremity; -LE Lower Extremity; -SP Spine. The optimal duration periods for use of such equipment in all operative scenarios has not been determined. The commission will be gathering this data to determine rental rates for individual types of CPM's in future revisions of the Medical Fee Guideline. The DME section (XI) has been rewritten to state:

"CPM equipment is rented on a daily basis and shall be billed using code E0935 along with the appropriate modifier(s) denoting affected body area: -UE Upper Extremity; -LE Lower Extremity; -SP Spine. Only one set of soft goods shall be reimbursed per injured worker."

COMMENT: The commenter supported the decision to bill by documentation of procedure (DOP) as an interim way to collect "real world" billing data to be used to set rates in two years.

RESPONSE: The commission agrees.

COMMENT: HCPCS Code L0748. The commenter requested that HCPCS Code E0748 be added to the HCPCS codes listed under durable medical equipment, in section E0720-E0755.

RESPONSE: The commission agrees. HCPCS Code E0748 has been added to the HCPCS code list as follows:

"E0748 Osteogenesis stimulator (non-invasive)"

The following comments were received regarding the orthotics and prosthetics ground rules.

COMMENT: The commenter expressed concern that arbitrary changes, whether intentional or not, will leave an opportunity for fraud and abuse to occur within the O & P segment of health care. For example, L2770 is described by Health Care Finance Administration (HCFA) as "an addition to lower extremity orthosis stainless steel, per bar or joint". This singular change would allow any lower extremity orthosis with a knee joint or an ankle joint to be billed at a much higher rate, all in accordance with TWCC's guidelines.

RESPONSE: The commission disagrees that adopting the descriptors provided in standardized coding systems, such as HCPCS or CPT, is arbitrary or needs to be changed. HCPCS and CPT descriptors have not been changed by the commission. HCPCS and CPT coding is revised yearly, based upon developments in medical technology and product production. If experience indicates there is abuse occurring in any area, future revisions of the Medical Fee Guideline may require ground rule additions which address abusive situations.

COMMENT: Many concerns were expressed in reference to the Orthotics and Prosthetics (O & P) Section of the Medical Fee Guideline. The following is a list of commenters' concerns and recommendations: O & P profession does not provide services that are billable under CPT codes; recommended that TWCC specify CPT codes in the proposed O & P section; recommended withdrawal of the O & P section and remand to a work group; occupational therapists (OT) and physical therapists (PT) are not adequately trained in O & P and should not be allowed to provide the full realm of O & P services; C.O., Certified Orthotist, is a designation which can only be used by individuals certified by the American O & P Association–other orthotists cannot use the designation C.O.; commenter endorsed COPA practice classification levels; education and evaluation differs between PTs and OT's; allowing OTs and PTs, pediatrists, pharmacists, physician assistants, cast room technicians to perform O & P services is not a favorable idea; to allow pedorthists to independently bill for services under present O & P Ground Rules would severely compromise quality of O & P clarification of treating doctor and other qualified HCPs is needed; HCPCS do not afford flexibility to treat unique situations; HCPCS code L7500 should be deleted from the O & P ground rules; the exclusion of certified Pedorthists from the O & P Ground Rules is not warranted; billing instructions are not clear and it's unclear what documentation is required; concern regarding the requirement for medical necessity for minor repairs and adjustments is uncalled for; American Board for Certification in O & P (ABC) credentials should be required for all O & P care; suggestion that braces that are not custom filled should be billed according to the DME ground rules; O & P should be separate from DME codes; concern expressed about potential modifiers and where to place credentials in reference to box 31 on the HCFA 1500 billing form; concern expressed about those excluded from performing O & P services; concern about BOC orthotist not being mentioned in the O & P section; concern about the phrase "all braces"; concern HCPs would confuse which HCPCS should be used for DME, O & P and supply services; some commenters want pedorthists added to the definitions and modifiers; concern about the definition of a stock shoe and orthopedic shoes not being included; another commenter states K0001-K0118 and K0131-K0284 are not specific to O & P and K0112-K0117 are inaccurately identified.

RESPONSE: Due to the volume of public comment received about the O & P Ground Rules and the controversy surrounding credentials for O & P providers, this section has been removed from the Medical Fee Guideline. A workgroup will be established to advise the commission in the revision of this section. It is anticipated that an O & P section will be included in the next revision of the Medical Fee Guideline. A provision requiring O & P to be billed using HCPCS codes has been added to the DME Ground Rules as section (XII). The introductory paragraph of the Durable Medical Equipment (DME) Ground Rules has been rewritten to allow the billing of "L" codes under theses ground rules. This was necessary due to the addition of the Orthotics/Prosthetics section to these ground rules. By maintaining this aspect of the removed section, the commission continues the goal of developing a database of usual and customary charges to be utilized in future revisions of the Medical Fee Guideline. The new DME Ground Rules section (XII) will read as follows:

"XII. Orthotics/Prosthetics Ground Rules

The primary coding system to be used in the billing for Orthotics/Prosthetics services is the HCPCS system. The specific HCPCS codes used are the K codes and L codes. CPT codes shall be used only when the service rendered does not fit the descriptions/codes provided in the HCPCS system."

The following comments were received regarding the evaluation and management ground rules.

COMMENT: Some commenters felt the proposed reimbursement moderately to significantly reduced the reimbursement for those evaluation and management codes that are most often used at the primary care

level. Some commenters felt that this will cause a tremendous escalation in the nonmedical costs to workers' compensation, and limit the access to the health care system. Another commenter requested reevaluation of the evaluation and management codes and the reimbursement for those evaluation and management codes, because they have been reduced by from four to thirty 30 percent for the primary care physicians. Another concern was the primary "gatekeeper's" decrease in reimbursement. In addition, another commenter stated that reimbursement for an office visit is less than in 1988.

RESPONSE: The commission agrees that an increase reimbursement for E/M services is warranted. Treating physicians within the workers' compensation system are responsible for maintaining administratively time consuming functions such as, researching compensability, establishing relationships with carriers, and evaluating return to work. Because of these added responsibilities in workers compensation, it is appropriate that the evaluation and management codes be upgraded to a higher level of reimbursement. Reimbursement for E/M codes under the proposal were set at the 30th percentile of billing distribution resulting in approximate 4.8% decrease in reimbursement from the 1991 Medical Fee Guideline. The new Medical Fee Guideline has been revised by setting reimbursement for E/M codes at the 40th percentile which represents an approximate 5.5% increase in reimbursement for the E/M codes from the 1991 Medical Fee Guideline.

COMMENT: (V)(B) and (XVIII)(C). The commenter suggested that there is a direct conflict between Evaluation and Management Ground Rule section (V)(B) and (XVIII)(C) referring to billing for multiple physician services because, one says that reimbursement for the office visit will include all connected services and the other implies that telephone calls are reimbursable.

RESPONSE: The commission disagrees that a conflict exists between these two sections. The language in sections (V)(B) and (XVIII)(C) is consistent with the American Medical Association's Physicians' Current Procedural Terminology (CPT) 1995 manual. Telephone calls that are not part of, or a result of the patient encounter are reimbursable separately from the office visit.

COMMENT: (IV)(C)(3)(a)(ii). The commenter questioned whether the term "non-face-to-face time" should be considered part of the office visit reimbursement and whether TWCC has interpolated this, as a result of their physician surveys.

RESPONSE: The commission disagrees that clarification is warranted. The physician surveys referenced in the guideline are not TWCC conducted surveys. These surveys were used by the AMA in the preparation of the 1995 CPT manual. Non-face-to-face time is considered part of the office visit reimbursement as described in Evaluation and Management Ground Rules section (IV)(C)(3)(a). The language of this section is consistent with the language of the 1995 CPT manual's Evaluation and Management Service Guidelines.

COMMENT: (V). The commenters objected to the guideline's lack of reimbursement for coordination of care where no patient encounter occurs. The commenters felt that a significant amount of time is spent on care coordination and that the lack of reimbursement for these service will force HCPs to schedule office visits for all matters, driving up costs.

RESPONSE: The commission disagrees. This part of the fee guideline prohibits billing for services for coordination of care on a day when a patient encounter has occurred. This language is consistent with the American Medical Association's Physicians' Current Procedural Terminology (CPT) 1995 manual's Evaluation and Management code descriptors. This section of the fee guideline simply gives an example of calling the pharmacist with a prescription. More complex services may be reimbursable as stated in Evaluation and Management section (V) Coordination of Care. Reimbursement for coordination of care is allowed when a referral doctor is calling a treating doctor as to a change in treatment plan as long as a patient encounter has not occurred on that day. According to the CPT code descriptor, coordination of care is a component of the office visit.

COMMENT: References General Instructions (X). The commenters expressed the opinion that a consulting doctor should be able to initiate more than just diagnostic and/or therapeutic services and asked whether the treating doctor could designate the consulting physician as the designated patient representative.

RESPONSE: The commission disagrees. Texas Labor Code §408.021(c) provides that except in an emergency all health care must be approved or recommended by the employee's treating doctor. General Instructions Section (X) states "when a consulting doctor initiates health care treatments at the request of the treating doctor, the consulting doctor then becomes a referral doctor; however the referral doctor should only initiate treatment if approved or recommended by the treating doctor". Although the doctor should be an advocate for the successful treatment of a patient, there is no provision for the doctor to be designated as a patient representative. This role requires an individual separate from employees interests or medical interests to assist in forming impartial decisions.

COMMENT: (X). The commenter felt that with regard to the practice of pain management, the limitation of reimbursement to one telephone call or written report every 30 days was unreasonable because the treatment of chronic pain patients is extremely complex and requires a great deal of coordination among involved physicians and specialists. Another commenter was concerned because there is no information in the Evaluation and Management Ground Rules section (X) about which CPT code is to be used and the amount of the charge for written reports to the treating doctor.

RESPONSE: The commission agrees. Because the reports section (General Instructions Ground Rules section (IV)) has been deleted, the last two sentences of section (X) in the E&M; Ground Rules have been deleted because they refer to reports. Provisions for reporting and reimbursement for reports remain in §133.100 of this title (relating to Required Medical Reports) and §§133.102-133.106 of this title (relating to Subsequent Medical Report; Specific Medical Reports; Consultant Medical Reports; Physical or Occupational Therapy Report; and Fair and Reasonable Fees for Required Reports and Records, respectively) at the present time. Therefore, questions regarding this section are a moot point. Evaluation and Management Ground Rules section (X) has been rewritten as follows:

"When a consulting doctor initiates health care treatments at the request of the treating doctor, the consulting doctor then becomes a referral doctor; however, the referral doctor shall only initiate treatment if approved or recommended by the treating doctor. Once the referral doctor initiates treatment, communication shall continue between the treating doctor and the referral doctor."

COMMENT: (XVIII)(B). The commenter recommended that the wording of section (XVIII)(B) be changed to make it clear that it is the doctor who is taking the time to coordinate the interdisciplinary team meeting to bill for such services.

RESPONSE: The commission agrees that this section is in need of clarification. This E/M Ground Rule Section (XVIII)(B) has been modified to state:

"Team Conferences (99361-99362): A conference coordinated by the doctor with an interdisciplinary team outside of an interdisciplinary program to assist in the development of treatment plans and coordinate activities of patient care. Only the coordinating doctor may bill for team conferences."

COMMENT: The commenter suggested that the prohibition of reimbursement for case management services when they occur on the same day that a patient encounter occurs should be deleted because the need for team conferences and/or phone calls concerning a patient case occur most commonly after a patient has been seen and may in fact occur on the same day. In addition, the commenter pointed out the AMA CPT codes, in their language, do not include this restriction.

RESPONSE: The commission disagrees. The CPT code descriptors for an office visit include a component of counseling and/or coordination of care. However in a case where unusually complex services occur on the same day of a patient encounter, the HCP has the option of billing for a higher level office visit if the documentation justifies this level of service.

The following comments were received regarding the Evaluation/Management Ground Rules.

COMMENT: (XXII). A commenter stated that the section dealing with treating doctor is very well written and believes it should be enacted as proposed.

RESPONSE: The commission agrees.

COMMENT: (XXII) compared to (XXIII) and (XXIV). The commenter felt a treating doctor should receive the same reimbursement as a non-treating doctor for an impairment rating.

RESPONSE: The commission disagrees. The greater reimbursement for the designated doctor and RME doctor is justified due to the amount of time required to familiarize him/herself with the medical history of the injured worker in addition to the physical examination. The treating doctor should already be familiar with the injured worker's history and the determination of MMI would fall within the category of an established patient office visit.

COMMENT: (XXII)(D)(2). A commenter suggested that reimbursement for an impairment rating performed by a doctor that has had very limited contact with the patient should be greater than the reimbursement a treating doctor would receive for an IR.

RESPONSE: The commission disagrees. A referral doctor that has previously treated the injured worker should be reimbursed for an IR at the treating doctor level because the referral doctor has already reviewed the history of the medical treatment, medical records, etc. and should already be familiar with the case.

COMMENT: (XXII)(C), (XXIII)(D) and (XXIV)(D). Many commenters suggested that additional body areas be considered in reimbursement of MMI/IR examinations. Commenters made suggestions for division of body areas including; the upper extremities being divided into left and right; the back being four areas; and the hand and shoulder being separate areas.

RESPONSE: The commission disagrees. The body area segmentation (spine/pelvis, upper extremities/hands, and lower extremities) has specifically been delineated to match the majority of the injuries and the divisions within the AMA Guides. Some patients require minimal examination and testing while some patients require more extensive examination. The reimbursement methodology accounts for economies associated with like skill, knowledge and testing required to assess and assign an IR for bilateral extremities or multi-levels of the spine.

COMMENT: (XXIII)(C)(3) and (E)(5), (XXIV)(C)(3) and (E)(5). The commenter was confused about where to place modifiers L1, L2, and L3 when other modifiers, such as -26, -27, or -WP are used.

RESPONSE: The commission disagrees that clarification is needed for billing instructions because the HCFA-1500 billing form allows multiple modifiers and thus, a CPT code would be billed with either the L1, L2, L3, L4, or L5 modifier as applicable, and a -26, -27 or -WP modifier. The current TWCC adopted HCFA-1500 form and instructions provide for modifiers to be placed in box 24D.

COMMENT: (XXIII)(D) and (XXIV)(D). Commenters pointed out that different areas of the guideline allow reimbursement for four areas while others specify three. The commenters suggested this be consistent.

RESPONSE: The commission agrees. The introductory sentence of Sections (XXII)(C) and (XXIII)(D) Evaluation/Management Ground Rules should be repeated at (XXIV)(D). The revised sections (XXII)(C), (XXIII)(D) and (XXIV)(D) should read as follows:

"Area Reimbursement. The HCP shall indicate the number of areas rated in the units column of the billing form with a maximum of four areas (three body areas and one specialty area)."

COMMENT: (XXIII)(E)(2) and (XXIV)(E)(2). Commenters recommend the reimbursement to providers for MMI patients be similar or equal to reimbursement for non-MMI patients.

RESPONSE: The commission agrees that an adjustment of reimbursement should be made for non-MMI cases. An adequate consistent fee for both designated doctors and RME doctors for examinations where MMI is not found will help to ensure that the objectivity in assessing MMI is not jeopardized. The language in Section (XXIII)(E)(2) has been deleted and rewritten to state:

"(2) When the result of the evaluation is that maximum medical improvement has not been reached, the reimbursement allowed is $350. This fee is inclusive of all services listed in (A) except those unique to assigning an impairment rating."

For consistency and clarification, section (XXIV)(E)(2) has been deleted and rewritten to state:

"(2) When the result of the evaluation is that maximum medical improvement has not been reached, the reimbursement allowed is $350. This fee is inclusive of all services listed in (A) except those unique to assigning an impairment rating."

This reimbursement is consistent with the spinal surgery second opinion reimbursement where services including examination and reporting requirements are required to evaluate the medical status and condition of the patient. Three hundred and fifty dollars takes into account the complex consultations and demand on doctors to document and report findings to multiple parties within the workers' compensation system. This reimbursement amount will be reevaluated during the next revision of the Medical Fee Guideline.

COMMENT: (XXIII) compared to (XXIV). Commenter suggested that the designated doctors be paid more because they have more responsibility in that their opinions have presumptive weight.

RESPONSE: The commission agrees. The base level reimbursement for designated doctors is greater than that for RME doctors which reflects the additional responsibility and qualifications required of DDs.

COMMENT: (XXII), (XXIII) and (XXIV). A commenter referred to subsection (r) (3) of §130.6 of this title (relating to Designated Doctor: General Provisions) which states that the designated doctor's charge for services should correlate with the actual time and level of service involved for each patient reimbursement from the carrier and should be the lesser of the charge amount or the fees as set out in the rule. Commenter felt this provision should apply also to the treating doctor, and the required medical examination doctor.

RESPONSE: The commission agrees that this goal should apply to reimbursements for all doctors doing IRs. The reimbursement methodology contained in the Medical Fee Guideline for treating doctors and RME doctors performing IRs is designed to address both time (from date of injury) which accounts for the complexity of the case and review time of the doctor, and level of service which is addressed through area reimbursement.

COMMENT: (XXII)(C)(2), (XXIII)(D)(2), and (XXIV)(D)(2). One commenter pointed out there was no mention made for the rating of injuries to the pulmonary or cardiac system, or for the brain. Another commenter felt that getting paid $50 for obtaining all of the reports and reviewing the records is too little reimbursement for determining an impairment rating.

RESPONSE: The commission agrees. "Specialty areas" such as pulmonary or cardiac system or the brain are addressed in the Medical Fee Guideline when additional testing is required by a specialist. The specialist will bill his/her UCR for testing using CPT codes and the RME doctor or DD can bill $50 for incorporating the test results into the final impairment rating. In addition, when a doctor is reviewing a case with a specialty area only, sufficient reimbursement to meet the minimum exam amount cannot be attained, therefore, the E/M Ground Rule Section (XXIII)(D)(2) has been rewritten to state:

"(2) Specialty Areas Reimbursement. The reimbursement for specialty areas that shall be rated where referred testing is required (e.g., audiologic or ophthalmologic testing) is $50 for incorporating one or more specialists' report information into the final impairment rating. This reimbursement shall be allowed once per examination. The referred specialist shall be reimbursed separately from the fees outlined in this section. When the designated doctor selected must only rate one or more specialty area(s), reimbursement shall be $450 for base and area."

For consistency and clarification, section (XXIV)(D)(2) has been rewritten to state: "(2) Specialty Areas Reimbursement. The reimbursement for specialty areas that shall be rated where referred testing is required (e.g., audiologic or ophthalmologic testing) is $50 for incorporating one or more specialists' report information into the final impairment rating. This reimbursement shall be allowed once per examination. The referred specialist shall be reimbursed separately from the fees outlined in this section. When the RME doctor selected must only rate one or more specialty area(s), reimbursement shall be $350 for base and area."

COMMENT: (XXIII) compared to (XXIV). Commenters objected to the difference in reimbursement for designated doctors and RME doctors because they involve the same work and education.

RFSPONSE: The commission disagrees. Base reimbursement for designated doctors is higher because of the additional duties, responsibilities, qualifications, and training required to serve as a designated doctor and perform designated doctor examinations.

There were a number of comments received regarding requirements and qualifications for designated doctors. Although these comments do not relate to the provisions in the Medical Fee Guideline, the commission has prepared responses to provide additional information to the public. The provisions which deal with designated doctors in the Medical Fee Guideline address the fees for designated doctor services and these fee provisions replace the fee provisions contained in §130.6(r) of this title. All other provisions of §130.6 remain in effect.

COMMENT: Section 126.10. Commenters felt that the three year active practice requirement in §126.10 of this title (relating to Commission Approved List of Designated Doctors) eliminated many physicians who are qualified to perform impairment ratings. Commenters recommended the elimination of this requirement.

RESPONSE: The subject of this comment does not address issues contained in the Medical Fee Guideline, however, the commission disagrees that the active practice requirement should be deleted. An active practice allows Designated Doctors (DDs) to be up-to-date on the latest medical developments, have a working knowledge of medical treatments and diagnosis, and to have similar qualifications as the treating doctors. This will ensure that DDs understand the issues relating to maximum medical improvement (MMI) and the treatment options available and necessary to attain MMI.

COMMENT: Section 126.10. All commenters recommended 30 hours of continuing education for designated doctors with at least 15 hours in disability evaluations.

RESPONSE: The subject of this comment does not address issues contained in the Medical Fee Guideline, however, the commission agrees, that ongoing training is important for DDs and has included in §126.10 of this title a requirement that DDs receive continuing education. The commission has established a core curriculum. This course is required every two years to ensure that DDs have the latest information on TWCC policies and Appeals Panel landmark decisions and to ensure that DDs are kept up-to-date on assessment of MMI and assignment of Impairment Ratings (IRs).

COMMENT: Section 126.10. One commenter related his background as an orthopedic surgeon who cannot continue to practice surgery due to a stroke but feels qualified to perform impairment evaluations. Another commenter stated that he will not qualify as a designated doctor under the new Designated Doctor Rule.

RESPONSE: The subject of this comment does not address issues contained in the Medical Fee Guideline. However, the commission agrees that an exception to the active practice requirement for DDs should be considered. The commission has enacted on an emergency basis an amendment to §126.10 which allows an exception to the active practice requirement for doctors who: establish that a disability has forced the doctor to cease active practice with routine office hours; have had an active practice for three consecutive years immediately prior to the disability; and continue to actively assist other doctors in the care and treatment of their patients through consultations. This amendment to §126.10 has simultaneously been proposed for adoption. The proposed amendment and identical amendment adopted on an emergency basis were published in the January 19, 1996, issue of the *Texas Register* (proposed-21 TexReg 497; emergency adoption-21 TexReg 475). The amendment adopted on an emergency basis went into effect on January 12, 1996, and will expire May 12, 1996.

COMMENT: Section 130.6. The commenter wanted a 10 to 12 day time frame for forwarding reports.

RESPONSE: The commission disagrees. The timeframe for completing the reports as established in §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment) is necessary to ensure timely resolution of the injured worker's dispute.

COMMENT: Section 130.6(r). Commenter disagreed with the hourly fee imposed by this rule and believed the established ways of measuring time is adequate.

RESPONSE: The commission disagrees. The base reimbursement amounts have been established to simplify the reimbursement process and to appropriately reimburse doctors for the amount of work required to review the medical records and history of the injured worker.

The following comments were received regarding the pathology ground rules.

COMMENT: (I)(A)(1) and (2). The commenter objected to the Pathology Ground Rules which state that if the collecting office is doing the billing for laboratory testing then the collecting office should only charge what the reference lab charges. A doctor's office must have some markup to offset their billing and collecting costs associated with the charge.

RESPONSE: The commission disagrees. Providers are instructed to charge their UCR fee, because this billing data allows the commission to build an accurate data base from which to make revisions to the Medical Fee Guideline. To allow physician offices to randomly mark up reference laboratory charges, distorts the data collected in those practices that routinely bill reference laboratory charges. The Pathology Ground Rule, Section (I)(A)(1) and (2) allows the collecting office to bill 99000 or 99001 as a handling charge.

COMMENT: (I)(C). The commenter questioned why billing for panel tests under Pathology Ground Rules section (I)(C) of the Pathology Ground Rules must include documentation listing the tests in the panel and suggested that this was unnecessary paperwork because the tests included are set out in the CPT book.

RESPONSE: The commission agrees. The requirement for submission of additional documentation has been deleted by removing two sentences of section (I)(C) of the Pathology Ground Rule section. The section now reads:

"Panel Tests. When billing for panel tests (80050-80092), use the code number corresponding to the appropriate panel test. These tests shall not be reimbursed separately. Any tests in addition to a particular panel or a second panel of tests shall be billed separately."

The following comments were received regarding the radiology ground rules.

COMMENT: (I)(D). The commenter suggested that the Medical Fee Guideline allow additional services to be added to a procedure if they will increase the safety and benefit margin for a patient. The same commenter felt that there would be cost savings if the examining or treating physician provides such services. An example would be an epidural steroid injection by clinical feel of loss of air resistance versus the confirmation of localization by the use of fluoroscopy.

RESPONSE: The commission agrees that a revision to the Medical Fee Guideline is needed. The Medical Fee Guideline does not limit the HCP's professional judgement in using videofluoroscopy when performing an injection, such as an ESI, but videofluoroscopy is not medically necessary when performing an injection, such as an ESI and will not be reimbursed. A HCP who is properly trained in performing injections is able to find the appropriate area to inject without placing the patient at any medical risk. Radiology Ground Rules (I)(D) has been rewritten to state:

"Videofluoroscopy is considered to be part of a myelogram and discogram. Therefore, when billing for either a myelogram, discogram, or injections, videofluoroscopy shall not be billed separately."

COMMENT: (VII)(B). The commenter suggested that imaging centers and radiologic centers be defined separately from the non-ambulatory surgical center' as is described in section (VII)(B) of the General Instruction Ground Rules. The commenter also questioned what reimbursement would be received.

RESPONSE: The commission disagrees with the need to separately define imaging and radiologic procedures from other procedures performed in doctors' offices. However, Section (VII)(B) in the General Instruction Ground Rules has been revised and moved to the Surgery Ground Rules to ensure it is clear that the section only applies to surgical procedures performed in physician's offices.

COMMENT: (II)(A) and SURGERY (I)(E)(4)(d). The commenter objected to the definition of multiple injection procedures as "introducing additional materials through the same puncture site." These ground rules indicate reimbursement of contrast injection for CAT scans, but

prior ground rules prohibit a contrast injection reimbursement in conjunction with other injection procedures. If contrast is injected with a definite purpose, it appears that a physician should be entitled to reimbursement. The current Medical Fee Guideline indicates how to bill and be reimbursed for injection of contrast. This guideline does not address this issue.

RESPONSE: The commission disagrees. The Medical Fee Guideline does not provide for separate reimbursement for multiple punctures when only a single puncture site is used; however it does allow for materials to be reimbursement separately even if used at the same puncture site. The Medical Fee Guideline provides for reimbursement of non-ionic contrast materials based upon volume and states that "Injection codes are listed separately in the appropriate sections and should be billed accordingly."

COMMENT: The commenters questioned the differences in reimbursement for codes with contrast as opposed to without.

RESPONSE: The commission agrees that reimbursement for radiology codes which use contrast should be higher than radiology codes without contrast. Reimbursement for CAT scan CPT codes which involve the use of contrast fell just inside the allowable 25% window selected for radiology. Reimbursement for these codes were therefore reduced and set at the reimbursement calculated using the new methodology. Reimbursement for radiology codes which do not involve the use of contrast fell just outside the allowable window and were therefore set at 25% above the reimbursement calculated using the new methodology. The inconsistency in the reimbursement resulted from moving the reimbursements either up or down according to the basic methodology. Because the calculated reimbursements were so close, but coincidentally one fell within and one outside the 25% window, the methodology resulted in inappropriate valuation of these codes. To correct this inconsistency, this group of radiology codes has been set at 25% above the percentile selected for radiology. The reimbursements for this area have been modified as follows:

"72125 and 72131 $580 PC = $150 TC = $430 72126 and 72132 $671 PC = $268 TC = $402."

COMMENT: (II)(A)(2) and (3). The commenter suggested that a definite pricing in the Medical Fee Guideline for contrast does not allow for price variation in the future and so contrast should be treated the same as HCPCS codes.

RESPONSE: The commission agrees that reimbursements for all HCPCS codes should be handled in a consistent manner. The commission lacks sufficient data to establish reimbursement rates for contrast materials. The use of charge data along with HCPCS codes, which are very specific, will allow the commission to develop a database of charges which can be used to set MAR for HCPCS codes at a future date. Radiology/Nuclear Ground Rules Section (II)(A)(2) and (3) have been rewritten to state:

"(2) Non-ionic contrast material for radiological procedure(s) shall be billed using the following codes:

(a) A4644: Supply of low osmolar contrast material (100-199 mgs of iodine)

(b) A4645: Supply of low osmolar contrast material (200-299 mgs of iodine)

(c) A4646: Supply of low osmolar contrast material (300-399 mgs of iodine)

(3) Contrast for MRI procedures shall be billed using HCPCS code A4647 when use of contrast is medically necessary."

The following comments were received regarding the medicine ground rules.

COMMENT: CPT 97770. The commenter was pleased to see development of cognitive skills (97770), included, as this is a crucial service for persons suffering traumatic brain injuries.

RESPONSE: The commission agrees.

COMMENT: CPT 97770. The commenter pointed out that there is a new CPT code-development of cognitive skills 97770, which is used to code for intensive one on one training for remediation of brain injuries. This is a code utilized by neuropsychologist and was not in the CPT book when the Mental Health Treatment Guideline (MHTG) was developed in 1993. It is therefore not listed as an acceptable code for qualified mental health providers in the MHTG.

RESPONSE: The commission disagrees. The most current edition of the American Medical Association's Current Procedural Terminology (CPT) is used in the development of any treatment guideline. Because the code 97770 was not in existence at the time the MHTG was written it is not included in that guideline; however, as new codes and treatments are developed, HCP's may use them. For example, even though a code is not listed in the MHTG, if it is listed in the new Medical Fee Guideline the mental health professional may use this code for reimbursement of the service.

COMMENT: CPT CODES 90801-90911. The commenters questioned some time driven reimbursements. One commenter felt that codes set at $2.00 or $3.00 per minute, while adequate in terms of reimbursement, increased the complexity of reporting and suggested that a fee per service would be less confusing.

RESPONSE: The commission disagrees. The relative value for select mental health services as published in the 1995 edition of McGraw Hill Relative Value for Physicians is based upon "per minute" charges. These relative values constitute a vital ingredient in the determination of MAR for all CPT codes. For the commission to deviate from this process for mental health services would be inconsistent with the process used to set reimbursement for other CPT codes. The commission acknowledges the billing of time by minutes is possibly more burdensome, but this is the standard practice for the billing of psychotherapeutic services and is consistent with McGraw Hill Relative Values for Physicians.

COMMENT: CPT CODES 90800-90999. The commenter pointed out that few health care providers are currently including actual time spent on services in their bills. The Medical Fee Guideline requires per minute billing for many psychological services (CPT codes 90800-90999). Therefore, there will be a need for education of health care providers so that reimbursement will not be denied.

RESPONSE: The commission agrees that many of the CPT codes in the psychiatric section of the Medical Fee Guideline have a relative value established by McGraw Hill and are based upon per minute increments of time. As MARs are determined in part by using McGraw Hill data, reimbursement is determined by the length of time involved in performing these psychiatric codes. Billing for these codes shall include the actual time. As such reimbursement is contingent upon billing these CPT codes including the actual time on their bills.

COMMENT: (II). The commenter recommended adopting biofeedback as a multi-disciplinary treatment model not limited to mental disorders and advocated its establishment as a medical entity of its own.

RESPONSE: The commission disagrees. The Medical Fee Guideline does not restrict biofeedback utilization. The commission acknowledges that biofeedback may be used within a multi-disciplinary program. However it is outside the scope of this document to establish biofeedback as a medical entity.

COMMENT: (II). The commenter objected to the exclusion from the Medical Fee Guideline of reimbursement for commissioning conferences that are done by HCPs, qualified mental health providers, dieticians, etc., who come together to evaluate the patient and the individual plan of care.

RESPONSE: The commission disagrees. Commissioning conferences are an integral part of the daily planning and operations of an interdisciplinary program and as such are not reimbursed separately. Commissioning conferences are not reimbursed as an additional service to interdisciplinary programs but are included in the hourly reimbursement for interdisciplinary programs.

COMMENT: old (I)(B)(3), new (III). The commenter expressed the opinion that osteopathic manipulative treatment should not be placed under physical medicine. Another commenter suggested that paragraph 3 under manipulation/ reimbursement be deleted and replaced with a new section entitled "osteopathic manipulative treatment", which would read exactly as printed in the 1995 physicians' current procedural terminology. The commenter also suggested the reimbursement for codes 98925 through 98929 are reimbursed too low. The commenter suggested modifying the section as follows:

"-MP Manipulation: This modifier will be added to the E/M code when the first manipulation for the visit is performed. This modifier does not need to be added when the osteopathic manipulation treatment codes (98925 through 98929) are used with an E/M code."

RESPONSE: The commission agrees that osteopathic manipulation, which is not included in the Physical Medicine Section of the 1995 CPT manual, be moved to a separate section (Section III) under the Medicine Ground Rules. The commission also agrees that reimbursement for osteopathic manipulation requires adjustment for equity by allowing an E/M code to be billed in addition to manipulation codes. Osteopathic Medical Specialists performing solely manipulative treatments during an office visit will use the appropriate E/M code, or code 99212 for established office visits. The section on osteopathic manipulation has been moved and rewritten to state:

"(III) Osteopathic Manipulation. When manipulation is provided by a doctor of osteopathy codes 98925 through 98929 shall be utilized. The doctor of osteopathy may bill 99212 for an established patient office visit in addition to the appropriate manipulation code and add modifier -MP to the office visit. If office visit includes separate and identifiable E/M services, use the appropriate E/M code."

Previous Section (III)-Nerve Studies in the Medicine Ground Rules has become Section (IV).

The commission disagrees with the suggestion that modifier -MP be added to the E/M manipulation code section for the first manipulation for the office visit only. In order to collect data on office visits billed solely for manipulative treatment, the commission has required the addition of modifier -MP for all office visits billed solely for manipulative treatment. Established patient office visits that include separate and identifiable services other than manipulation should be billed using the appropriate E/M code and do not require the addition of modifier -MP.

Section (I)(B)(3) in the Medicine Ground Rules has been deleted because Osteopathic Manipulation is now a subsection.

COMMENT: (I)(C)(1)(r). The commenter noted phonophoresis has been omitted from the 1995 American Medical Association's Current Procedural Terminology (CPT) modalities that require constant attendance.

RESPONSE: The commission agrees. The code for phonophoresis has been eliminated from the 1995 American Medical Association's Current Procedural Terminology (CPT). Because this modality is still in use, however, billing for phonophoresis is addressed in Medicine Ground Rule section (I)(C)(1)(r) which instructs providers to use code 97139 -PH for this procedure.

COMMENT: (I)(E)(3)(a) and (b). The commenter suggested that isokinetic and isometric testing be billed by planes of motion or specific tasks which is more reasonable and more common than billing by area.

RESPONSE: The commission disagrees. To maintain consistency with the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, Third Edition, Second Printing testing by body area is the method of billing specified in the Medical Fee Guideline. To specify testing by planes or axis would replicate testing done for physical capacity and functional capacity examinations.

COMMENT: CPT Code 97750. The commenter questioned the reimbursement for CPT code 97750 because it does not differentiate for the wide variety of testing equipment used.

RESPONSE: The commission disagrees. The description for CPT code 97750 was adopted directly from the AMA's *Current Procedural Terminology* (CPT), 1995 Edition and is now the only code available for physical performance testing or measurement. Code 97752, computerized muscle testing, has been deleted from the 1995 CPT manual. Reimbursement is based upon the results of the measurement, not upon the method used to obtain the measurement.

COMMENT: (I)(C)(6). A commenter suggested the deletion of "are both utilized for the purpose of pain relief; therefore, both" in the Medicine section (I)(C)(6) because iontophoresis is used for purposes other than pain relief. Another commenter suggested that in (I)(C)(6) iontophoresis supplies should be reimbursed at $15 rather than $12.50 because $12.50 does not cover the cost of the supply. Another commenter pointed out that the reimbursement rate for phonophoresis supplies has been decreased $7.00. With the cost of supplies increasing with each passing year, how can the rate of reimbursement be reduced.

RESPONSE: The commission agrees. Due to additional information received from MAC members on the cost of these supplies the reimbursements warrant increase. Information on these supplies show $7.00 is reasonable for phonophoresis and $15 is reasonable for iontophoresis. The commission acknowledges that both modalities can be used for the reduction of pain. However, the primary benefit of iontophoresis is for the reduction of inflammation with a secondary benefit of reduction of pain. Therefore the phrase, "are both utilized for the purpose of pain relief; therefore, both" has been removed. In Medicine section (I)(C)(6), text has been revised to state:

"Phonophoresis supplies shall be billed using code 99070 and shall be reimbursed at $7.00; iontophoresis supplies shall be billed using code 99070 and shall be reimbursed at $15. Phonophoresis and iontophoresis shall not be reimbursed for the same area on the same day."

COMMENT: (I)(C)(1)(a). The commenter suggested that Medicine Ground Rules (I)(C)(1)(q), TENS application for trial basis, should not include supplies and training. The supplies and training for the trial application of a TENS unit must be reimbursed to the HCP especially when the HCP is issuing the TENS provided by an independent or outside supplier. The present rules allow $12 per pair for reimbursement. This could be increased to $14 per pair, a five-pair maximum for an eighth-electrode placement on the injured worker.

RESPONSE: The commission disagrees. This edition of the Medical Fee Guideline does not address maximum reimbursement for supplies for a TENS application on a trial basis. Medicine Ground Rules Section (I)(C)(1)(q) 97139-TN is to be used for the initial application of TENS for a trial basis including supplies and training. As with all 97139 CPT codes, DOP is required and this would be the appropriate place to justify the level of training and supplies billed.

COMMENT: (I)(B). A commenter questioned whether physical therapists should assume that codes 97260 and 97261 are the appropriate codes for billing manipulation. (Jeanette Winfree)

RESPONSE: The commission disagrees that any revision to this section is necessary. CPT codes 97260 and 97261 are the appropriate CPT codes for billing physical medicine manipulations performed by any HCP other than an Osteopathic Medical Specialists who use codes, 98925 through 98929.

COMMENT: (I)(A)(10). The commenter felt section (I)(A)(10) mixes fee issues with medical treatment judgment. The commenter felt it was inconsistent with the treatment guidelines and should be eliminated. The commenter felt that beyond the acute phase of the injury the potential need for five to seven hours of exercise per day is not allowed by the Medical Fee Guideline.

RESPONSE: The commission disagrees. Upon review, no conflict between Medicine Ground Rules (I)(A)(10) and the treatment guidelines was found. The purpose of the treatment guidelines is to establish normative courses of treatment, while fee guidelines set limits for reimbursement and utilization. When the needs of the injured worker exceed the three hour limit and meet the criteria for single or interdisciplinary programs, the provider should bill using the appropriate CPT codes 99545 -WH, WC; 99546 -WH, WC; 97799 -CP; or 97799 -MR. Single and interdisciplinary programs allow greater time than two to three hours. CPT codes for single and interdisciplinary programs are not included in the three hour time limitation. If five to seven hours of exercise are required a work conditioning program would be appropriate.

COMMENT: (I)(A)(10). The commenter suggested that the Medical Fee Guideline contain a limit or ceiling on the maximum allowable reimbursement (MAR) per day for physical medicine.

RESPONSE: The commission disagrees. A per diem amount is not warranted. Reimbursement for physical medicine is based on reasonable and necessary services rendered to ensure essential care is provided. Time limits on physical medicine are currently based on recommendation of the Medical Advisory Committee and are based on the number of treatments and length of treatments deemed necessary by the provider. A per diem limit could jeopardize quality of or access to care. It would be inconsistent to implement per diem caps solely for physical medicine and not for all medical services. Data analysis of TWCC data for physical medicine modalities shows that providers bill the maximum utilization level 3.0% of the time. Clearly per diem limits

are unnecessary as present utilization controls are seldom reached.

COMMENT: (I)(A)(8). The commenter felt therapist re-evaluations are better defined in the proposed Medical Fee Guideline and are more equitable.

RESPONSE: The commission agrees.

COMMENT: (I)(A)(10)(a). The commenter was concerned that if a HCP had one hour of reconditioning therapy procedures in the plan of care and utilized this code four times in one session, that would constitute the maximum allowed for that office visit.

RESPONSE: The commission disagrees. CPT code 97150 which is not a timed procedure would be billed once for reconditioning therapy procedures since reconditioning does not require one-to-one direct patient contact. Physical medicine is limited to a maximum of four different modalities, procedures, training and/or activities.

COMMENT: (I)(A)(10) and (II)(G). The commenter objected to section (I)(A) (10) in the Medicine Ground Rules section stating that this section does not make sense and creates disincentives for exercise treatment objectives. The commenter felt that "physical medicine session" was not appropriately defined and should be deleted, leaving only the independent terms a) modalities, b) procedures, c) training. Another commenter recommends in the medicine section (I)(A)(10)(a), (b), and (c)–procedures and training should be separated and distinct from physical medicine procedures. Another commenter felt that the limitation of physical medicine sections to two hours (or possibly three by documentation of procedure (DOP)) is not appropriate for procedure/training and this limitation should be revised. Another commenter felt such a restriction would curtail the most effective treatment for musculoskeletal chronic pain.

RESPONSE: The commission disagrees. The purpose of defining a "physical medicine session" is to control utilization while still allowing providers to determine appropriate treatment. The definition of physical medicine sessions allows providers to combine the most appropriate modalities, procedures, and training to achieve a beneficial course of treatment for the injured worker. At the same time, the limit of three-hours for a physical therapy session controls costs and allows appropriate time for necessary treatment. The time limit was supported by the Medical Advisory Committee which includes experts in physical therapy, occupational therapy, chiropractic, osteopathy and medicine. Procedures and training should not be separated from the Physical Medicine Section because these codes are in the 1995 CPT manual under the Physical Therapy Medicine Section and constitute valid physical medicine therapy. Patients in need of extended periods of therapy for musculoskeletal chronic pain should be considered for chronic pain management programs as described in Medicine Ground Rules sections (II)(G). However, The commission recognizes that providers may perform one or more treatments not to exceed four per session and has added "up to" in the first sentence.

COMMENT: (I)(A)(11)(a). The commenter suggested rewording section (I)(A)(11) (a) to clarify that free weights are not an example of manual resistance. Another commenter felt that the definition of Therapeutic Procedures (97110) in section (I)(A)(11)(a) Physical Medicine is completely different from what the code book says this procedure includes. The commenter suggested that (97110) use AMA language and then perhaps the TWCC should make up its own new code to reflect this service and description. Another commenter suggested clarifying language 11, a. Line 2 by adding 'to' after resistance and deleting parentheses from free weights, deleting "to" and inserting "and". Rationale–free weights are not an example of manual resistance. Another commenter stated it also implies that a facility must have isokinetic, isometric, or isoinertial equipment in order to be able to use this code.

RESPONSE: The commission agrees. The Medicine Ground Rule section (I)(A)(11) (a) has been rewritten to be consistent with AMA CPT manual while clarifying that the last sentence is an example. With the revision it is now clear that manual resistance, isokinetic, isometric, and isoinertial equipment are only examples of therapeutic procedures and it is not mandatory that a facility have isokinetic, isometric, and isoinertial equipment in order to bill CPT code (97110). Section (I)(A)(11)(a) of the Medicine Ground Section has been rewritten to state:

"Therapeutic procedures (97110) is defined as therapeutic exercises used to develop strength and endurance, range of motion and flexibility. Examples include the use of graded resistance ranging from manual resistance to a variety of equipment including isokinetic, isometric, or isoinertial in one or more planes."

COMMENT: (I)(A)(9(b) and (I)(A)(11)(a). The commenter felt the definition of "supervision" for physical medicine activities and training, and the definitions for therapeutic procedures (97110) and kinetic therapy are much better after adopting the AMA's revision this past summer.

RESPONSE: The commission agrees.

COMMENT: (I)(A)(8). The commenter recommended that code 99215 be added at the end of line one in section (I)(A)(8) of the Medicine Ground Rules because a comprehensive, time consuming initial evaluation does not suggest that the reevaluation can be less comprehensive.

RESPONSE: The commission disagrees. CPT code 99215 is the highest, most complex billing code set for established patients. It requires a comprehensive history and examination, medical decision making of high complexity, and medical problems of moderate to high severity. While initial occupational and physical therapy evaluations may be of such complexity to warrant billing at higher rates, reevaluations are generally expected to be less comprehensive in nature, and thus should be billed consistent with the level of complexity described by CPT code 99213.

COMMENT: (I)(E)(2). The commenter supported the provision regarding functional capacity evaluation (FCE) which now requires the start and end time and there is better coordination among muscle testing, physical capacity assessments, and FCE's. This is helpful.

RESPONSE: The commission agrees.

COMMENT: (II)(G). The commenter felt that if the chronic pain management physician is limited in his ability to make an appropriate review of the often extensive medical records, evaluate his medical regimens by direct contact with his pharmacies and is denied his ability to encounter and discuss the patient's case more often than once per month, he is not going to benefit from the multi-disciplinary algorithm which has been proven to be effective nationally by multiple evaluators. In particular, when therapeutic procedures are performed at a follow-up visit, these must not be bundled to previous evaluations if appropriate distinction and documentation is made based on the patient's physical condition.

RESPONSE: The commission disagrees that the Medical Fee Guideline limits a physician's ability to evaluate and treat patients. The commission disagrees that the Ground Rules limit the referral physician in the manner described. In the Evaluation and Management Ground Rule Section (X), Referred Doctor, the time limit of 30 days has been removed. Section 133.100 of this title and §§133.102-133.106 of this title shall continue to be in effect regarding reimbursement for reporting. Section (V) Coordination of Care and Section (XVIII) Case Management gives further instruction on appropriate codes for use under the commenter's examples as long as it is not part of a chronic pain management program. Additional reimbursement for a therapeutic procedure performed at a follow-up office visit would be reasonable, as long as the patient is not involved in a singular or multi-disciplinary program at the same time.

COMMENT: old (III)(B)(2)(d), new(IV)(B)(2)(d). The commenter questioned the wording of Medicine Ground Rule section (III)(B)(2)(d) which states "bilateral testing for 'H' studies will always be allowed for the lower extremities." The "H" wave is a valid test in many cases, but per the interpretation of that code, 95935, bilateral studies would not always be indicated for reimbursement.

RESPONSE: The commission agrees this section requires clarification. Medicine Ground Rule (III)(B)(2)(d) states that bilateral testing for "H" studies will always be allowed for lower extremities. After consultation with the AMA, it was determined that bilateral testing is always allowed, but bilateral testing must be performed to be reimbursed. Medicine Ground Rule Section (IV)(B)(2)(d) has been rewritten to state:

"'H' studies on lower extremities may be billed bilaterally when performed. "

COMMENT: old (III)(B)(2)(c), new (IV)(B)(2)(c). The commenter felt that "H" wave studies should be permitted for the upper extremity.

RESPONSE: The commission disagrees. Although the commission acknowledges that certain specially trained providers obtain and interpret "H" waves in the upper extremity, review of the American Medical Association reveals that there is a high error rate in interpreting results. As a result, the ground rules disallow reimbursement for "H" wave studies billed for upper extremities.

COMMENT: The commenters stated that surface electromyography can be critically important to guide diagnosis and treatment of musculoskeletal pain. Its use should not be limited.

RESPONSE: The commission agrees. Surface EMGs can be a useful diagnostic tool when appropriately administered and interpreted. The Medical Fee Guideline does not limit the use of surface EMGs.

COMMENT: CPT Code 95925. The commenter has received bills of up to $2,000 for SSEPs (95925) and is asking for clarification regarding whether $175 is the maximum allowable reimbursement for this service.

RESPONSE: The commission agrees that in the example cited by the commenter, the maximum allowable reimbursement would be $175 regardless of the number of nerves involved. The rationale for this is based on CPT descriptors which changed for code 95925 in 1994. The current descriptor for CPT code 95925 indicates one or more nerves. Innervation Technology data used to establish reimbursement was consistent with this descriptor. The reimbursement is 100% of the MAR or the billed amount, whichever is less, for that particular code regardless of number of nerves tested.

COMMENT: (I)(C)(1)(q). The commenter expressed concern that TENS units are not mentioned in the Medicine Ground Rules section.

RESPONSE: The commission disagrees. TENS units are addressed in section (I) (C)(1)(q) under CPT code 97139-TN which is used to bill for TENS application. (In addition the DME Ground Rules contain additional information regarding TENS units.)

COMMENT: CPT Codes 97220, 97221, 97240, 97241, 97530, 97531. The commenter noted that several CPT codes in the 97220-97541 range have been eliminated-97220 and 97221 hubbard tank and CPT codes 97240 and 97241 aquatic therapy were deleted. The description for CPT code 97530 has changed from kinetic to therapeutic activities and CPT code 97531 (additional 15 minutes) was deleted.

RESPONSE: The commission agrees that these were eliminated and changed and disagrees that the proposed text should be revised. The 1995 edition of the American Medical Association CPT code manual has eliminated these codes and changed the general description of 97530. The adopted new Medical Fee Guideline has incorporated these changes.

COMMENT: The commenter felt that overall the reimbursement for "Psychiatry" (mental health) CPT codes is acceptable and more closely in line with usual and customary charges.

RESPONSE: The commission agrees.

COMMENT: (II). The commenters supported the concept of a hourly MAR rate for interdisciplinary programs. Another commenter added that the rate must be equitable and fair.

RESPONSE: The commission disagrees with the commenter's suggestion to establish a MAR for chronic pain management and outpatient medical rehabilitation services due to a lack of data on which to base a fair and equitable reimbursement rate. The section does specify providers shall bill on a per hour basis for each day. The commission is currently in a data collection phase for chronic pain management and outpatient medical rehabilitation services. HCPs should bill their usual and customary rates for such services and submit documentation of procedure (DOP). Reimbursement will be at a fair and reasonable rate.

COMMENT: (II)(C). The commenters suggested that a grace period be allowed for CARF certification because it is a lengthy process to achieve accreditation.

RESPONSE: The commission disagrees. Accreditation is not mandated therefore there is no need for a grace period. Those facilities that elect not to seek CARF accreditation will still receive a significant increase in reimbursement over what was allowed by the 1991 Medical Fee Guideline.

COMMENT: (II)(C). The commenter expressed the concern that many smaller facilities or clinics do not have the manpower or the financial resources to go through the CARF accreditation process and the "TWCC approved equivalent" is not defined in these ground rules. Another commenter questioned whether the Commission would publish a list of "equivalent accrediting bodies" prior to the adoption of the proposed medical fee guidelines. Another commenter stated that it costs more money to operate a true work hardening program than a work conditioning or reconditioning program. These programs should be allowed to receive the maximum reimbursement for these services if they adhere to the definition and standards set forth in the ground rules of the Medical Fee Guideline. Several commenters expressed concern regarding the language in Medicine Ground Rules section (II)(C). Although CARF accreditation is not required, some commenters felt the language implies Commission endorsement of CARF. Other commenters suggested that only "TWCC approved accrediting body" be referred to in the guideline. Some commenters objected to requiring CARF accreditation because CARF has an unproven track record in improving the quality of care. Another commenter recommended deleting the accreditation requirement altogether.

RESPONSE: The commission disagrees that programs that adhere to the definitions and standards set forth in the Medical Fee Guideline should receive the maximum reimbursement. Accreditation standards are much more comprehensive than those set forth in the Ground Rules of the Medical Fee Guideline. Rehabilitation facilities are not required to have or be in the process of obtaining CARF accreditation. However, there is an additional financial incentive for those facilities that have obtained this accreditation. Facilities that elect not to seek CARF accreditation, will still receive a significant increase in reimbursement over what was allowed by the 1991 Medical Fee Guideline. CARF is a nationally recognized accrediting body for rehabilitation programs and is the accrediting standard for a number of other states workers' compensation programs. The Commission has determined that it is not equipped to assume the task of determining "equivalent accrediting bodies" at this time and has therefore removed this language from Section (II) (C) of the Medicine Ground Rule this section now states:

"Accreditation: Accreditation by CARF is recommended, but not required, for all interdisciplinary programs. If the program is accredited, then the modifier "-AP" shall be used in addition to the other modifiers designated for the listed interdisciplinary programs. If the interdisciplinary program is not accredited, then the hourly reimbursement for the program shall be reduced 20% below the maximum allowed reimbursement, if the MAR is listed in the ground rules, or 20% below the usual and customary reimbursement for that program. This ground rule applies to the interdisciplinary programs which are Work Hardening, Outpatient Medical Rehabilitation, and Chronic Pain Management."

For consistency, modifier -AP in the Medicine modifiers has been rewritten to state:

"-AP Accredited programs: This modifier shall be used when a CARF approved facility is used for interdisciplinary programs."

COMMENT: (II)(C). Commenters objected to CARF accreditation being rewarded with a financial incentive. One commenter felt that reducing reimbursement to non-CARF accredited facilities was not fair, reasonable or practical and encouraged the commission to consider other means of accreditation. Another commenter stated for a program to become CARF accredited, they've got to invest an enormous amount of time, money and effort into doing that. The commenter believes they need to be rewarded by having their fees raised 20% over the fees in the proposed 1995 Medical Fee Guideline.

RESPONSE: The commission disagrees that a financial incentive for CARF accreditation is inappropriate. The financial and time investment necessary for a health care provider to meet CARF accreditation standards justifies an incentive for the effort and investment. Accredited programs warrant additional reimbursement to offset financial expenditure needed to meet the standards required for accreditation. CARF assures program content which fosters an environment and creates a program which increases the quality of rehabilitation services. The commission agrees with the other comment that additional reimbursement for accreditation is reasonable. Single and interdisciplinary programs which are not accredited have received a 10% increase over the 1991 Medical Fee Guideline. Accredited programs have received an additional 30% increase over previous Guideline reimbursements.

COMMENT: (II)(C). The commenter supported CARF certification as desirable to increase the chances of quality of care being rendered to the injured worker. A number of other states either require certification or utilize CARF standards of quality to reimburse services for workers' compensation rehabilitation, or reimburse at a higher level if CARF certification is held by the billing party.

RESPONSE: The commission agrees.

COMMENT: (II)(C). The commenter advocated TWCC approval of pain management programs whose medical director is certified by the American Board of Medical Specialists. The commenter also stated that there are some self-proclaimed "certifying bodies" that should not be TWCC approved.

RESPONSE: The commission agrees that all accrediting bodies may not meet the standards that TWCC wishes to achieve. The commission disagrees that specifying the credentials of the medical director is sufficient to ensure quality of care. CARF accreditation standards go far beyond specifying the credentials of the medical director. As the program directors credentials is only one of the many essential elements, that are necessary for quality rehabilitation programming. CARF is recognized as a nationally accepted accreditation for rehabilitation programs and is the accrediting standard for a number of other states workers' compensation programs.

COMMENT: (II)(C). The commenter recommended that practitioners in the field of pain management be required to be board certified by one of the two recognized boards and that they practice in a dedicated pain management facility.

RESPONSE: The commission disagrees. The commission has been moving toward facility accreditation. The accrediting process assures that facility staff are certified by their respective boards. To specify individual board certified practitioners may conflict with future commission guideline initiatives relative to program content needed for accreditation. Pain management professionals practice in a wide variety of health care settings and need not be located in a dedicated pain management facility to provide quality care. The commission prefers to leave identification of appropriate credentials to the appropriate accreditation body.

COMMENT: (II)(F)(7) and (II)(G)(7). The commenter recommended that references to specific types of medical specialists supervising interdisciplinary programs be deleted because the person who needs to be directing the program is really determined by the clinical emphasis of the program. It could be different types of health care providers.

RESPONSE: The commission agrees to delete references to specific types of medical specialist supervising medical programs. Other specialists may appropriately supervise these types of interdisciplinary programs. The Medicine Ground Rules sections (II)(F)(7) and (G)(7) have been revised to state:

"(F)(7) Program supervision is provided by a doctor who is trained and experienced in the treatment of severely impaired patients. The program supervisor shall: ...

(G)(7) Program supervision is provided by a doctor who is trained and experienced in the treatment of patients with chronic pain syndrome as described earlier in this section. The program supervisor shall: ..."

COMMENT: (II)(F)(3)(b) and (II)(G)(3)(b). The commenter expressed the concern that the wording of sections (F)(3)(b) and (G)(3)(b) in the Medicine Ground Rules implies that an injured worker cannot receive individual psychotherapy services outside of a program and suggested a change in the language of the section.

RESPONSE: The commission agrees. The second sentence of section (II)(F)(3) (b) and (II)(G)(3)(b) of the Medicine Ground Rules have been revised to state:

"(II)(F)(3)(b) Due to the intensity of the program, both group and individual therapy may be part of the Outpatient Medical Rehabilitation program. If the program includes individual psychotherapy, it shall be billed as part of the program and not separately. If the program does not include psychotherapy services, such services may be billed separately, subject to applicable preauthorization requirements and the mental health treatment guideline (MHTG).

(II)(G)(3)(b) Due to the intensity of the program, both group and individual therapy may be part of the Chronic Pain Management program. If the program includes individual psychotherapy, it shall be billed as part of the program and not separately. If the program does not include psychotherapy services, such services may be billed separately, subject to applicable preauthorization requirements and the mental health treatment guideline (MHTG). "

COMMENT: (II)(C). The commenters agreed with establishing minimum standards but advocated TWCC being the determiner of facility or program certification. CARF or other agencies should only be an optional part of the process with TWCC having the final word.

RESPONSE: The commission disagrees. The commission lacks the experience and resources to develop, administer and monitor an accreditation process. The process would be administratively burdensome and best left to organizations that specialize in quality assurance initiatives.

COMMENT: (II)(E)(4). A commenter felt that there is no logical reason to use a "-WH" modifier when the CPT description is work hardening. Will carriers take this to mean that by billing 97545-WH for the first two hours they are only required to pay $64 rather than $128.

RESPONSE: The commission disagrees. Work hardening (WH) and work conditioning (WC) are both billed using CPT codes 97545 and 97546. The modifiers "-WH" and "-WC" were developed to create a way of tracking and billing the service performed. CPT code 97545 is for two full hours of service and the standard reimbursement of $64 per hour applies to work hardening which is CARF accredited as stated in Medicine Ground Rule (II)(E)(4) and (5).

COMMENT: (II)(C). The commenter was very gratified and wished to reinforce the guidelines efforts to connect accreditation to compensation.

RESPONSE: The commission agrees that accreditation should be encouraged by allowing greater reimbursement to accredited facilities.

The following comments were received regarding the general instructions.

COMMENT: (III). The commenter was concerned about the proposal to reimburse interdisciplinary programs, such as pain management programs, on a "description of procedure" (DOP) basis. Under the proposed guidelines there are no criteria to define proper description of procedure, therefore leaving enormous room for individual interpretations for reimbursement by adjustors, managed care companies and cost review companies.

RESPONSE: The commission disagrees. Elements of documentation of procedure (DOP) are listed in the General Instruction Ground Rules, section (III) and provide adequate criteria to define proper documentation of procedure (DOP).

COMMENT: (V) The commenter questioned why a documentation of procedure (DOP) is still required when a HCPCS code is used for a supply.

RESPONSE: The commission agrees that DOP is not warranted for billing of all HCPCS codes and has removed the following from this requirement. A statement of medical necessity serves as the justification for DME/supplies dispensed by the DME provider. This is consistent with the language in the DME Ground Rules. DOP serves as the justification for doctors dispensing DME/supplies to the patient within their office. All HCPCS and 99070 codes that are charged at or less than $50 will be exempt from requiring documentation of procedure (DOP) because this small monetary value does not justify the time involved in completing and reviewing documentation of procedure. General Instructions Ground Rules Section (V), (now section (IV)) has been rewritten to state:

"Supplies and materials provided over and above those usually included in the office visit and in excess of a cumulative total of $5.00 for that date of service may be billed separately using the Health Care Financing Administration Procedure Coding System (HCPCS) codes listed in this guideline. If no HCPCS code is available for the supplies and materials code 99070 shall be used for those supplies otherwise not coded and a description shall be included. Documentation of procedure (DOP)/Supplies is required for any single supply that is billed at $50 or greater."

COMMENT: Introduction. The commenter supported the mandatory on-site supervision as it is described in the Medical Fee Guideline and

felt that this may help curb some of the current abuses within the system.

RESPONSE: The commission agrees.

COMMENT: Introduction. The commenter expressed concerns regarding the definition of on-site supervision contained in the first paragraph of General Instruction and felt that it cannot be applied to all specialties. Radiologists that read films long after the patient has gone home cannot possibly see and speak to the patient. Pathologists fall in the same category. The commenter recommended that the definition end after the word "rendered".

RESPONSE: The commission agrees that clarification of this section is necessary. The purpose of this ground rule is to ensure that a licensed HCP is present when a patient is receiving treatment or technical services from a non-licensed individual. However, the ground rule does not require the patient be present when the professional services are being performed such as, in the cases of radiologist or pathologists, reading and/or interpreting diagnostics. The General Instructions introductory paragraph has been rewritten to state:

"The Texas Workers Compensation Commission Medical Fee Guideline 1996, shall be effective for all medical services rendered by Health Care Providers (HCP) on or after April 1, 1996. The Medical Fee Guideline does not supersede scope of practice limitations for HCP specialties. The listed maximum allowable reimbursements (MAR) only apply when a licensed HCP is performing those services within the scope of practice for which the provider is licensed, or when a non-licensed individual is rendering care under the direct on-site supervision of a licensed HCP. For the purposes of this guideline, on-site supervision is defined as the presence of the licensed HCP at the location where the services are being rendered by a non-licensed individual and direct visual and verbal contact with the patient at scheduled intervals during the period of time for which treatment is being provided by a non-licensed individual at that site."

COMMENT: Introduction. The commenter agrees that it is very important that as described on page one of the Medical Fee Guideline, the maximum allowable reimbursement should apply only when a licensed HCP is providing those services within the scope of practice for which the provider is licensed.

RESPONSE: The commission agrees.

COMMENT: The commenter felt that the use of new modifiers as tracking or monitoring indicators was contrary to accepted general carrier practice, does nothing to promote uniformity of coding and billing and will result in additional cost to the compensation program.

RESPONSE: The commission disagrees. Modifiers provide additional information regarding a CPT code and its usage that otherwise would not be available. In this regard, they significantly enhance and explain the CPT codes reported. The Texas Labor Code, §413.007(a) and (b) state: "(a) The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by: (1) the commission in adopting the medical policies and fee guidelines; and (2) the division in administering the medical policies, fee guidelines, or rules. (b) The division shall ensure that the data base: (1) contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols; and (2) can be used in a meaningful way to allow the commission to control medical costs as provided by this subtitle. This statutory mandate supports the use of modifiers to allow the commission to obtain the most accurate information available which can be used in future revisions of the Medical Fee Guideline. Accurate information benefits the entire workers' compensation system."

COMMENT: (VII)(A). The commenter felt that section (VII)(A), of the General Instruction Ground Rules for reimbursement, is ambiguous.

RESPONSE: The commission agrees that section (VII)(A), now section (VI)(A), should be clarified. "Usual and customary" was replaced with "billed". The section was also modified to clarify that ultimately it is the Commission that will determine what constitutes fair and reasonable reimbursement in the event of a dispute. Other changes were made to be consistent with other revisions. General Instructions Ground Rule section (VI)(A) is revised to read:

"An MAR is listed for each code excluding documentation of procedure (DOP) codes and HCPCS codes. HCPs shall bill their usual and customary charges. The insurance carrier will reimburse the lesser of the billed charge, or the MAR. CPT codes for which no reimbursement is listed (DOP) shall be reimbursed at the fair and reasonable rate. HCPCS codes shall be reimbursed as provided in the DME Ground Rules. In the event of a dispute, fair and reasonable shall be determined by the Commission in accordance with the Texas Workers' Compensation Act and Commission rules and procedures."

COMMENT: (VII)(A). The commenter pointed out that it is an accounting and tracking nightmare to bill usual and customary charges so that certain participants can capture the total dollar savings.

RESPONSE: The commission disagrees. Although it may be more burdensome, it is in the best interest of the workers' compensation system that HCPs bill their usual, customary and reasonable charges. The Texas Labor Code, §413. 007 mandates that the division maintain a statewide database of medical charges, actual payments, and treatment protocols that may be used by the commission in adopting the medical policies and fee guidelines. The collection of data on usual and customary charges will aid in establishing fair and reasonable rates in future revisions of the Medical Fee Guideline.

COMMENT: (VIII). The commenter suggested that General Instructions section (VIII), "Broken or Missed Appointments" needs to be specific regarding the amount of reimbursement for these appointments. The reimbursement for missed appointments is covered in other areas but not here.

RESPONSE: The commission agrees with the need to include a reference to the sections addressing reimbursement for "Broken or Missed Appointments" where there are commission or carrier required appointments. Billing for broken or missed appointments is outlined in section (XXI)(A)(2) and (B)(2), (XXIII)(E) (3) and (XXIV)(E)(3) in the Evaluation and Management (E/M) Ground Rules. Reimbursement is not provided for other types of missed appointments. The places with specific reimbursement amounts are now referenced in General Instructions Ground Rules section (VIII). Section (VIII) of the General Instructions has been clarified and rewritten to state:

" Broken or missed appointments shall not be reimbursed unless the appointment was scheduled by the commission or the insurance carrier and less than 24 hours notice of cancellation was given. Billing for reimbursable appointments is outlined in the Evaluation and Management (E/M) Ground Rules section (XXI)(A)(2) and (B)(2) regarding spinal surgery second opinion appointments, (XXIII)(E)(3) regarding designated doctor appointments and (XXIV) (E)(3) regarding required medical examination appointments."

COMMENT: Modifier-MP. The commenter felt that inconsistencies appear in the ground rules from section to section and with CPT definitions in the application of modifiers. For example the CPT "-57" modifier has been deleted from the list of surgical modifiers. The "-WP" modifier for non-purchased diagnostic tests has a different connotation in the general instruction section than in the radiology/pathology sections and requires in the evaluation/management section the use of an additional code to identify this service when performed during an office or hospital visit.

RESPONSE: The commission disagrees. Modifiers selected for incorporation into the Medical Fee Guideline are based upon the frequency of the service, the value of the information it imparts, and the need for additional information during bill processing and/or commission data collection efforts. Because modifier "-57" does not meet this criteria it was not included in the list of modifiers contained within the proposed Medical Fee Guideline published in the October 20, 1995, issue of the *Texas Register*, or the adopted Medical Fee Guideline 1996. The intent of the modifier "-WP" Whole Procedure, is to denote services or procedure that are completed or performed by one individual. In radiology and pathology, professional and technical components of a particular CPT code, performed by a singular individual warrants modifier "-WP." As listed in evaluation and management, the completion of all testing components, including any specialty testing for systemic impairment, performed by one individual, warrants modifier "-WP."

COMMENT: (VII)(B), SURGERY (V). The commenters expressed concern about the fee of $75 stated in General Instructions section (VII)(B)(2)(a) and (b) and that it might be interpreted as the facility fee. Another commenter objected to the facility fee reimbursement of $150 because it is insufficient to cover costs of the service. Another commenter was concerned that a certified ambulatory surgical facility

would be subject to these reimbursements. Still another commenter suggested that imaging centers and radiologic centers be defined separately from "non-ambulatory surgical centers."

RESPONSE: The commission agrees that language in this section needs clarification to reduce confusion with procedures performed in licensed ambulatory surgical centers and confusion regarding what represents "facility charges". The title of the section has been changed to "Surgical Procedures Performed in a doctor's office" to clarify that the section applies only to procedures performed in a Doctor's office. Ambulatory surgical centers are a specific defined facility licensed by Texas Department of Health, this section does not address procedures performed in such centers. Fees related to such a center's facility charge are reimbursed at a fair and reasonable rate. By deleting the word "facility" the commission acknowledges that this guideline only addresses service performed and supplies used by a doctors office, and does not address the "facility" charge. Facility charges for licensed and non-licensed ambulatory surgical centers will be addressed in an upcoming guideline. Specific reimbursements were deleted because the setting of a singular reimbursement to cover the wide range of services/supplies utilized in ambulatory surgical centers may seriously undervalue or overvalue certain services/supplies. Instead, documentation of procedure is now required for services/supplies which are billed at $50 or greater. Imaging and radiologic centers not performing surgical procedures (e.g. diagnostic injections) would not be included in this section because it applies to surgical procedures performed. General Instructions Ground Rules section (VII)(B) has been revised and moved to the Surgery Ground Rules as new section (V). This is a more appropriate place for this section because it applies to situations where surgery is being performed. The new section has been rewritten to state:

"(V) Surgical Procedures Performed in a Doctor's Office.

(A) In order for the doctor's office to qualify for facility reimbursement for surgical procedures performed in a doctor's office, the office shall meet the following requirements:

(1) a complete and routinely checked crash cart;

(2) a registered nurse, CRNA, or doctor dedicated to the "facility" room;

(3) a separate observation or recovery room;

(4) patient monitoring equipment, including EKG and pulse oximetry equipment; and

(5) support staff and equipment to ensure that the care received by the patient is the same as that which would have been received in an ambulatory surgical center or in the outpatient surgical ward of a hospital.

(B) If the above listed requirements are met, the only reimbursements allowed for facility charges are the following:

(1) Sterile trays (which include all supplies, gloves, utensils, needles, suture material, etc., needed to perform the procedure). These are billed using 99070-ST. Reimbursement is the lesser of the doctor's usual charge or fair and reasonable reimbursement. DOP is required if charges are $50 or greater.

(2) Anesthesia supplies which include the administration of the sedative, the IV solution, the catheter/tubing, and drugs. No additional charges are allowed for equipment or staffing. If the services require the use of complex or prolonged anesthesia or the need for an anesthesiologist or CRNA, the service shall be performed in a hospital or ambulatory surgical center. This service is billed using code 99070-AS. Reimbursement is the lesser of the doctor's usual charge or fair and reasonable reimbursement. DOP is required if charges are $50 or greater.

(3) Postoperative monitoring which is reimbursed hourly. This service is billed using code 99499-RR, and includes the facility, staffing and monitoring equipment. No separate charges shall be allowed for HCP stand-by. The maximum amount of time allowed for postoperative monitoring is four hours and DOP is required."

Because of this change, section (VII)(B), now (VI)(B), of the General Instructions Ground Rules has been deleted.

COMMENT: (IV). There were many comments regarding section (IV) of the General Instructions Ground Rules which relates to documentation and reporting. Comments were as follows: commenters asked that the requirement that operative reports be submitted with surgery bills be deleted; that the title be revised to read "General Ground Rules for Medical Reports"; that the TWCC-64 be included in the rule; that all doctors who examine a patient and generate a TWCC-69 be reimbursed; that documentation submitted in response to TWCC treatment guidelines also be reimbursed; that fees for reports should be raised to $25-$30; that voluntary submission of office progress notes should be reimbursed; that the requirement that consultation reports be submitted to the carrier be deleted; that the requirement that office dictation or notes be submitted to the carrier be deleted; that a time limit of two days be added to section (B)(3); that section (B)(5) be clarified to distinguish an initial evaluation from a reevaluation; that the fees for medical records be adjusted for cost of living adjustment; and that the standards for reporting be better communicated to providers to avoid denial of reimbursement for failure to comply with the ground rules. One commenter felt that time spent in procedures the contributory portion of each surgeon will need to be determined by the evaluation and management service should be specified.

RESPONSE: The commission agrees that revisions should be made to this section. General Instructions Ground Rules section (IV) (due to a clerical error this section number was transposed) entitled "Documentation and Reporting Reimbursement Guidelines" has been deleted and will be reviewed and reproposed at a later date. It is anticipated that a section containing General Ground Rules for Medical Reports will be included in the next revision of the Medical Fee Guideline. Section 133.100 of this title and §§133. 102-133.106 of this title shall continue in effect regarding reimbursement for reporting.

The following comments were received regarding the surgery ground rules.

COMMENT: Modifier -51. The commenters questioned the use of the "-51" modifier. Should the provider reduce the fee by 50% or use the "-51" modifier and leave the charge at the provider's usual and customary fee. One commenter indicated that the AMA CPT guidelines are more specific in this instance.

RESPONSE: The commission agrees to clarify the confusion on this issue. It is in the best interest of the workers' compensation system that usual and customary be billed by HCPs. In this regard the provider shall also continue to bill according to the same method, and use of appropriate modifiers as he or she would bill any other payor. If the provider's usual and customary way of billing surgeries is cutting the charges with modifier "-51" by 50%, the provider should bill that way. If the provider normally bills surgery services with modifier "-51" at 100%, the provider should bill that way.

COMMENT: Modifier -20. The commenter questioned the use of Clinic modifier -20, microsurgery use of operating microscope. Commenter expressed appreciation for the additional reimbursement, but felt it makes no sense to pay an additional fee for using a tool that makes your job safer and easier.

RESPONSE: The commission disagrees. An operating microscope can be an integral assistive device to surgeons performing delicate surgical procedures. With this understanding, reasonable reimbursement to ensure such devices are available for patient safety are used are justified.

COMMENT: Modifiers -62 and -65. The commenter felt surgery modifiers "-62" "two surgeons" and "-65" "co-surgeons" are unclear as to what the reimbursement percentages will be and if the reimbursement will be at 100% of the total procedure(s) performed. Another commenter asked for clarification on the working of modifier "-62," indicating two surgeons, as in a situation where a neurosurgeon performs a laminectomy followed by an orthopaedic surgeon performing a fusion on the same patient. This is not clear, is each surgeon paid as a primary procedure, or is there a discount spread among the two surgeons? Another commenter stated that when an operative procedure extends over a long period of time it is common to have more than one surgeon involved. The reimbursement schedule does not allow payment in excess of 100% of the designated fee. Obviously this is not important under most circumstances but when multiple surgeons are required with trauma surgery especially reconstruction, they are only compensated at 75% of their customary reimbursement when using modifier "-65." This ignores the fact that the liability is shared by all surgeons involved and there is no exception allowed for extenuating circumstances and particularly difficult type procedures.

RESPONSE: The commission disagrees there may be some confusion when using modifiers "-62" and "-65." Due to the wide range of surgical procedures the contributory portion of each surgeon will need to be determined by the participating surgeons, not to exceed 100% when using modifier "-62." Under modifier "-65" each surgeon is reimbursed their charge or 75% of the MAR, whichever is less, for the procedure performed. Since modifier -65 is used only when co-surgeons are operating through the same incision, the reimbursement received for the two procedures is identical to the amount received if one surgeon was performing both procedures. In the 1991 Medical Fee Guideline, modifier -62 would be used for both co-surgeon and two surgeon situations. Splitting this into two modifiers simplifies auditing of the bills and should decrease disputes. An example of the use of co-surgeon would be when a neurosurgeon performs a laminectomy followed by an orthopaedic surgeon who performs a fusion. The commission acknowledges in certain situations protracted surgical procedures may justify additional reimbursement. In these situations, modifier "-22" be used accompanied by documentation of procedure (DOP). Under certain circumstances the skill of two surgeons (usually with different skills) may be required in the management of a specific surgical procedure.

COMMENT: (II)(B)(2)(a), (b) and (d). In the Surgery Ground Rules section (II)(B)(2)(a), (b), and (d), a commenter suggested that the commission remove the requirement to submit documentation and a separate code (99025) to substantiate the level of service given when a starred procedure is carried out at the time of an initial office visit or emergency room visit and the procedure constitutes the major service at that visit. In addition, a commenter recommended that the Medical Fee Guideline require the use of CPT modifier "-25" to identify the significant separately identifiable service or visit by using the modifier the visit is explained and additional information should not be required for unusual circumstances.

RESPONSE: The commission disagrees. Surgery Ground Rule section (II)(B)(2) (a) lists no requirement for DOP, only the use of code 99025. The requirement to use code 99025 in this situation is consistent with 1995 McGraw Hill Relative Values for Physicians. The use of modifier "-25" would be redundant in this situation where a specific code is identified. The commission disagrees with the suggestion to remove the requirement for DOP from Surgery Ground Rule section (II)(B)(2)(b) and (d). It is necessary to substantiate the level of service provided during hospital admissions for a starred procedure. Starred procedures include variable pre-operative and post-operative services. Because of the variable nature of these services, DOP is justified.

COMMENT: (I)(D)(4). Many commenters advocated inclusion of all board certified physician assistants, including those Certified Orthopedic Physician's Assistants and inclusion of reimbursement as appropriate.

RESPONSE: The commission disagrees with the addition of Certified Orthopedic Physician Assistants or Orthopedic Physician Assistants in the definition of certified physicians assistants. Certified Orthopedic Physician Assistants or Orthopedic Physician Assistants do not meet the licensure standards of physician assistants programs accredited by the American Medical Association's Committee on Allied Health Education, or a person who has passed the certifying examination administered by the National Commission on Certification of Physician Assistants, and who is licensed by the Physician Assistant Advisory Council. Certified Orthopedic Physician Assistants and Orthopedic Physician Assistants certifications are not presently recognized within this guideline for reimbursement.

COMMENT: The commenter felt the proposed Medical Fee Guideline contained better surgical ground rules overall, particularly noting clarification of epidural steroid injections, and all paraspinal and paravertebral injections. The commenter indicated that his company has for some time followed these protocols, and that this should avoid much contention.

RESPONSE: The commission agrees.

COMMENT: (I)(A)(1)(b). The commenter recommended that the Medicare program's global fee concept be adopted because it is very clear regarding what is included in the global surgical fee and is universally understood and accepted by the medical community.

RESPONSE: The commission agrees. Medicare's Global Fee concept is standard for the industry. This section has been rewritten to include "Included in the global period for surgery are all preoperative visits beginning with the day prior to surgery." Section (I)(A)(1)(b) has been added and previous section (I) (A)(1)(b) has been redesignated as (c)). They now read:

"b. Included in the global period for surgery are all preoperative visits beginning with the day prior to surgery.

c. The number of consecutive post-operative follow-up days allowed is listed in the column titled FUD adjacent to the MAR column for the specific surgical code. The number of follow-up days allowed is the FUD for the primary procedure."

COMMENT: (I)(B). The commenter objected to section (I)(B) in the Surgery Ground Rules. Section (I)(B)(1)(a) states that "doctors should not charge an emergency room visit in addition to surgery resulting from that visit unless surgery is the starred procedure." This is unfair. When a patient presents in the emergency room, time spent examining, evaluating and treating the patient is much longer. The assessment and treatment of the patient is more complex and involved. Because emergency room staff are not trained to deal with workers' compensation issues it takes the surgeon longer to arrange for surgery than if arrangements were made through the doctor's office. A physician should be entitled to bill for the initial emergency room evaluation and subsequent report.

RESPONSE: The commission agrees. Surgery Ground Rules section (I)(B) stipulates under what circumstances immediate pre-operative visits and other services by the surgeon warrant additional compensation. Under this section (I) (B)(1), the surgeon may charge if the pre-operative visit is the initial visit which requires prolonged detention or evaluation in order to prepare the patient and/or to establish the need for a particular type of surgery. The language in section (I)(B)(1)(a) has been clarified as follows:

"Doctors shall not charge an emergency room visit in addition to a surgery resulting from that visit unless the requirements stipulated in (B)(1) shall be met or the surgery is a starred procedure, in which case, code 99025 is appropriate."

In the situation described by the commenter, additional reimbursement for the initial workup and evaluation performed may be warranted.

COMMENT: (I)(D)(2). The commenter believes that CPT codes 64443, 64901, 64902 are additional level codes and will always be used in conjunction with a primary procedures and will never be used as a primary procedure and because of this fact these CPT codes should be added to the multiple surgical procedure box. CPT codes 20974, 20975 are commonly used as secondary procedures but upon occasion can be used as primary procedures and CPT code 44950 is a primary procedure most of the time and these three CPT codes should be deleted from the box used to for procedures valued at 100%.

RESPONSE: The commission agrees that there has been significant revision in this section of the guideline, and that 64443, 64901 and 64902 should be added to the full value for multiple procedure box. CPT codes 20974, 20975, 44950 are identified in the 1995 edition of *McGraw Hill Relative Value for Physicians* as codes for which "multiple procedure guidelines for reduction do not apply". CPT codes 20974, 20975 and 44950 were already listed in the multiple procedure box and CPT codes 64443, 64901 and 64902 were added.

COMMENT: (I)(D)(3) NOTE. The commenter felt that the note in section (I)(D) (3) appears to be created by the staff. There is no other comparable rule in McGraw Hill or CPT that we are aware of that limits the ability of any surgeon to assist any other surgeon and be compensated for the assisting. Either co-surgeon could bring in another assistant which would be reimbursable.

RESPONSE: The commission agrees that the note in section (I)(D)(3) was created by the commission, but disagrees that it limits surgeons from bringing in an appropriate assistant surgeon, surgical team, one of two surgeons or co-surgeons. This note does not prevent any of these surgeons from receiving reimbursement. The note prevents participating surgeons from billing for more than one of these modifiers per surgery. For clarification, the note has been rewritten as follows:

"Note: A doctor who acts as a member of a "surgical team", modifier "-66", as "one of two surgeons", modifier "-62", or as a "co-surgeon", modifier "-65", may also bill using modifier "-80 assistant surgeon" only for those procedures in which assistance rendered is medically necessary."

COMMENT: (I)(D)(1). The commenter stated that certain procedures such as anterior/posterior fusions, may have to be done on different days for patient medical reasons (obesity, blood loss, complicating medical factors, etc.). Because the workload is not decreased (and is in fact increased) the commenter felt that a reduction in payment is not warranted. In addition, commenter felt that there should not be a reduction when these procedures are done on the same day. The McGraw Hill formula allows reimbursement at 70% on the second primary procedure, which is more reasonable than the proposed rule allows.

RESPONSE: The commission agrees that when procedures are performed on different days, reimbursement should not be reduced. The NOTE following section (I)(D) of the Surgery Ground Rules has been deleted. However, staged procedures still require documentation of medical necessity justifying a staged procedure and if procedures are performed on the same day the multiple procedure rule applies. The note in section (I)(D) of the Surgery Ground Rules has been deleted.

The commission agrees that the multiple procedure rule should not be enforced for second primary procedure in anterior/posterior fusions. After reviewing standards in coding and current AMA CPT coding guidelines, the instrumentation codes has been listed as primary procedures as described in Surgery Ground Rule (E)(1).

COMMENT: (I)(D)(1)(a) and (I)(E)(7). One commenter suggested that the words "major procedure" need to be defined to give some clarification and direction. Another commenter asked for clarification regarding how to determine if a procedure is deemed separate or incidental.

RESPONSE: The commission agrees to add clarification regarding what constitutes a major or primary procedure consistent with McGraw Hill's definition. Surgery Ground Rule section (I)(D)(1)(a) has been rewritten to state:

"100% of the MAR for the primary procedure, (major procedure reflecting the greatest value)."

COMMENT: (I)(E)(1), (2), and (3). The commenters objected to the creation of one CPT code for identification of combination anterior/posterior spinal procedures (360s). The commenters preferred the use of one CPT code for each of the two surgeries involved, but suggested that if one code was to be used reimbursement should be divided into three, maybe as many as six, levels.

RESPONSE: The commission agrees. The Surgery Ground Rules Section (I)(E) and specified coding do not allow for consistent billing and reimbursement. The Surgery Ground Rules have been revised to allow for all the prescribed codes to be billed in lieu of one bundled unlisted code. The multiple codes staff outlined are derived from standards in coding, current AMA CPT coding guidelines and research of commenters suggestions. These codes will have an established MAR. The Surgery Ground Rules Section (I)(E) has been rewritten to state:

"(1) Posterior or anterior instrumentation (codes 22840-22845) is listed separately in addition to the code(s) for fracture, dislocation or arthrodesis of the spine (codes 22305-22812). The instrumentation code(s) should be listed as a secondary procedure, without further reduction. Reimbursement shall be allowed posteriorly or anteriorly for the placement of the fixation devices. Instrumentation is performed on a spine that is unstable, and usually multiple levels are involved.

(2) Arthrodesis:

(a) All arthrodesis procedures include those vertebral graft preparations, such as diskectomy, necessary to accomplish the arthrodesis.

(b) When vertebral procedures (e.g. laminectomy) are followed by arthrodesis, the arthrodesis is billed with modifier -51 and the multiple procedure rule applies to anterior and/or posterior arthrodesis.

(c) Combination Anterior/Posterior Spinal Procedures shall be billed using the codes for both anterior and posterior arthrodesis with TWCC Alpha Modifier "-AP" on both codes. The multiple procedure rule does not apply when no vertebral procedure is performed.

(d) When anterior arthrodesis approach is performed by a different surgeon, both surgeons bill using the anterior arthrodesis CPT code with modifier-65.

(3) Bilateral Procedures

(a) Unless otherwise identified in the CPT descriptor, bilateral procedures that are performed at the same operative session shall be identified by the appropriate five digit code describing the first procedure. The second (bilateral) procedure is identified by adding modifier -50 to the procedure.

(b) Fusions, instrumentations, and/or nerve decompression procedures are considered bilateral, therefore, no additional reimbursement shall be allowed.

The second definition of modifier -50 was deleted due to the deletion of Surgery Ground Rule section (I)(E)(3).

For consistency, the surgery modifier -AP has been revised as follows:

"-AP Combination Anterior/Posterior Spinal Procedures: This modifier shall be billed for all surgical procedures performed to complete the combination anterior/posterior surgical procedure."

COMMENT: (I)(E)(3)(a). The commenter expressed concern in relation to bilateral procedures under Surgery Ground Rules section (I)(E)(3)(a) which states that "For spinal surgeries requiring bilateral procedures through the same incision, modifier 50 must be used with the appropriate CPT code. An additional $370 will be reimbursed for each bilateral procedure". And then it says, "The multiple procedure rule does not apply." In section (I)(E)(3)(b) it says "Fusions and/or instrumentations are considered bilateral therefore no additional reimbursement is allowed." Does that mean it refers to (a)?

RESPONSE: The commission agrees that this section is unclear. Due to the lack of data needed to support the additional allowance of $370 for bilateral procedures, as well as to maintain consistency with customary coding practice. Surgery Ground Rules Section (I)(E)(3)(a) has been rewritten as indicated in the response to the previous comment.

COMMENT: (I)(E)(4). Commenters expressed the opinion that in section (I)(E) (4), surgical injections points (b), (c) and (d) both contradict (a). Section (I)(E)(4)(a) says surgical injections delineated as per injection by CPT descriptor and the nomenclature warrant additional reimbursement per injection subject to the multiple procedure rule within the same body part warrants reimbursement and (b) states injections delineated as per level by CPT descriptor and nomenclature are considered bilateral. Each additional level is exempt from the multiple procedure rule. Every injection procedure performed by a physician, whether through the same puncture site or not, is a separate injection and should be reimbursed as such. In referring to surgical injections, another commenter expressed concern regarding the multiple procedure rule and CPT code 20550, trigger point and ligament injections. The proposed guidelines result in a greater than 50% reduction from the commenter's customary fees in the situation where multiple injections are necessary. Three commenters objected to Surgery Ground Rules section (I)(E)(4) (c) which limits epidural steroid injections (ESI) to one single billing code 62289. One commenter indicated that techniques and outcomes for epidural steroid injections can be different.

RESPONSE: The commission disagrees that in the Surgery Ground Rule section (I)(E)(4), subsection (a) contradicts subsection (b), (c) and (d). Subsection (c) pertains only to epidural steroid injections and subsection (d) pertains to introduction of materials through the same puncture site. Neither (c) nor (d) have any relation to (a) or (b). Subsections (a) and (b) attempt to delineate reimbursement differences when the CPT descriptor specifies the injection is per injection (a) or per level (b). The multiple procedure rule is a standard coding practice and not unique to TWCC. The intent is to clarify that those surgical injections within the same body area that are by CPT code descriptor identified as per injection are subject to the multiple procedure rule. The multiple procedure rule results in the first injection being reimbursed at 100% of MAR and subsequent injections being reimbursed at 50% per the multiple procedure rule. If injections are needed in an additional body area, the first injection is reimbursed at 100% with subsequent injections in the same body area subjected to the multiple procedure rule. The commission does allow for multiple materials to be reimbursed separately at the same puncture site, but when only one puncture is performed only reimbursement for one puncture is needed. The professional expertise needed to perform an injection is in the puncture and placement of the needle. The purpose of this Ground Rule is to limit reimbursement to only one puncture, when multiple punctures are unnecessary. There is insufficient justification to substantiate the allowance for reimbursement for multiple punctures when

only a single puncture site is used. Injection codes are very specific with regard to the type of material injected as well as the site of the injection. Code 62289 is specifically used only for the injection of steroids in the epidural area. There are other injection codes which pertain to anesthetics, neurolytic and injection of contrast. There is no need for injection codes to differentiate epidural steroid injection.

In order to clarify that each additional level of surgical injection is exempt from the multiple procedure rule and reimbursed at full value, the Surgery Ground Rule Section (I)(E)(4)(b) has been rewritten to state:

"Injections delineated as per level by CPT descriptor and nomenclature are considered bilateral; each additional level is exempt from the multiple procedure rule and shall be reimbursed at full value."

The following comments were received regarding the guideline in general.

COMMENT: The commenter made a statement about the Preauthorization Rule leading to delays in getting the services to the injured worker.

RESPONSE: This comment pertains to §134.600 of this title (relating to Procedure for Requesting Pre-Authorization of Specific Treatments and Services) and does not pertain to the Medical Fee Guideline.

COMMENT: The commenter was glad to see the proposed increase in reimbursement for pulse generator placement and drug infusion pumps and felt the reimbursement now approached satisfactory levels.

RESPONSE: The commission agrees.

COMMENT: The commenter suggested the creation of an abuse investigation department within TWCC to attempt resolution of problems without resorting to formal dispute.

RESPONSE: This issue is outside the purview of the Medical Fee Guideline.

COMMENT: The commenter suggested that the changes to the Medical Fee Guideline be reviewed on an annual basis rather than every five years.

RESPONSE: The commission agrees. The Texas Labor Code, §413.102 states that medical policies and guidelines be reviewed at least every two years. The commission intends to review and revise the guidelines on a regular basis.

COMMENT: The commenter supported the recommendations of T-Bones and urged that they be given consideration.

RESPONSE: The commission has given due and equal consideration to all comments submitted during public comment period and public hearing.

COMMENT: The commenter advocated that the guidelines restrict billing and collecting for fees for tests such as EMG's, NCV's, surface EMG's and dermatomal SSER's to those physicians who are trained in the performance and interpretation of such tests.

RESPONSE: The commission disagrees that this guideline should restrict billing and collection of fees for tests such as EMGs, NCVs, surface EMGs, and SSEPs. The Medical Fee Guideline is not a treatment guideline, it is therefore inappropriate for it to instruct regarding diagnosis, patient care or treatment outcomes. It has been the policy of the commission not to supersede the restrictions of professional licensing boards. It is the role of a licensing board to establish parameters within its trade which define the roles and responsibilities of the care providers. In the introduction to the General Instructions Section of the Medical Fee Guideline reimbursement is limited to HCPs performing services within the scope of practice for which the provider is licensed.

COMMENT: The commenter requested that the workman's compensation commission instruct their computer programmers to move up to the 1994-1995 CPT codes.

RESPONSE: The commission agrees. The 1995 CPT codes were used for the Medical Fee Guideline. Reimbursement is directly derived from TWCC billing data, 1995 McGraw Hill Relative Value for Physicians, as well as 1994 and 1995 Texas specific, fee-for-service billing data from Innervation Technology Corporation.

COMMENT: A number of commenters expressed general support for the Medical Fee Guideline and complimented Texas Workers' Compensation Commission (TWCC) staff for the enormous amount of work undertaken in dealing with complex matters. Some commenters expressed the view that the proposed Medical Fee Guideline was a great improvement over the current fee guideline. One commenter expressed the methodology is sound.

RESPONSE: The commission agrees.

COMMENT: The commenter recommended listing the conversion factor for maximum allowable reimbursement (MAR), professional components (PCS), and technical components (TCS) in the Medical Fee Guideline.

RESPONSE: The commission disagrees with the recommendation to list conversion factors. The commission is moving away from listing conversion factors and relative value units. The commission is moving toward a system where the reimbursement for services is based on their fair market value. In addition, the commission is not authorized to publish the relative values obtained from McGraw Hill, or the conversion factors obtained from Innervation Technologies Corporation. This information is copyrighted. The information is available for inspection at the Texas Workers' Compensation central office in Austin.

COMMENT: A commenter was concerned about the misconception of what constitutes usual and customary (U & C) and the definition for usual and customary and how usual and customary will be used to determine MARs. Another commenter suggested that the Medical Fee Guideline establish specific definitions for abbreviations used. U & C, R & C and MAR and also explain the criteria used for establishing the value.

RESPONSE: The commission agrees that some terms are confusing but disagrees that definitions of all these terms is necessary in the Medical Fee Guideline. Usual and customary (U & C) represents the standard fee a HCP charges for services. Statewide U & C is the conglomerate of these standard fees for HCPs who bill for the same service, as identified by CPT coding throughout the state. This information provides the distribution of charges for like procedures and is representative of the economics of supply and demand as well as healthcare cost drivers, inflation, labor, liability, etc. How this information is used to determine MARs is explained in detail at the beginning of the preamble. Reasonable and customary (R & C) is used most often to describe the reimbursement afforded by carriers for the provision of medical services or equipment. This term is not used in the Medical Fee Guideline. The Medical Fee Guideline contains a section entitled "Acronyms" in the back which explains abbreviations. The preamble to the proposed Medical Fee Guideline explains in detail the methodology used to establish reimbursements.

COMMENT: Four commenters felt that the time allowed for review of the proposed Medical Fee Guideline was too short.

RESPONSE: The commission disagrees. The commission has ensured that public comment was solicited in accordance with the Administrative Procedure Act. The commission proposed the new §134.201 on October 12, 1995, the rule was published in the *Texas Register* on October 20, 1995, and the public comment period closed on November 20, 1995. A five-hour public hearing was held on November 9, 1995 where over 35 commenters gave oral comments on the proposed rule. Approximately 185 written comments were received. Additional input was solicited through the commission's Medical Advisory Committee (MAC) who have consulted their respective associations and specialists throughout the last 18 months. Final presentation of the proposed Medical Fee Guideline to the MAC was made on September 15, 1995.

COMMENT: The commenter suggested changing the provider's "usual fees and charges" to "published usual fees and charges" when describing the maximum allowable payment.

RESPONSE: The commission disagrees that the addition is necessary. There is no explanation by the commenter as to where usual fees and charges would be published. It would be administratively burdensome for the commission to track thousands of fees for over 40,000 individual providers. The Medical Fee Guideline clearly instructs providers to bill U & C charges if a HCP published price list contains their U & C then it is within the guidelines provisions. In addition it is the commission's intent to reflect an industry wide UCR instead of individual provider's U & C.

COMMENT: The commenter stated that he also provides mental health services related to pain associated with compensable injuries and suggested that the proposed fees will allow continuance of such services to injured workers.

RESPONSE: The commission agrees.

COMMENT: Two commenters challenged statements that HCPs were being paid at 91% of the private pay insurance market.

RESPONSE: The subject of the commenters' concern is not contained in the Medical Fee Guideline. The Workers' Compensation Research Institute's (WCRI) independent research has shown that the 1991 Medical Fee Guideline reimburses 91% of private indemnity. This may mistakenly be interpreted as meaning 91% of the private pay insurance market, or 91% of reasonable and customary rates. This concept has confused some commenters, but subsequent telephone conversations with the WCRI staff has confirmed the percentage cited is relative to private indemnity claims.

COMMENT: The commenter stated that he has been told by TWCC personnel that HCPs should bill the amount in the fee schedule or lower, or else it would be considered overbilling. The commenter also stated that memos are sent to carriers clarifying TWCC rules and regulations, procedures etc., that other participants in the workers' compensation system are not being informed about. This is devastating and costing the commission great sums of money and manpower forcing an overloading of the already overloaded dispute resolution section.

RESPONSE: The commission disagrees. The commission has always stated HCPs should bill their usual and customary fee. The commission acknowledges that many providers may wish to bill at the Medical Fee Guideline to simplify bookkeeping, but this practice prevents the commission from developing a database as mandated in the Texas Workers' Compensation Act, §413.007. Advisories are widely distributed to clarify workers' compensation issues to program participants.

The following comments were received regarding the methodology.

COMMENT: The commenter felt that it was arbitrarily determined that 160 most commonly coded billing services in some way shape of form represent over-utilization and pointed out that a survey of 30 states with comprehensive worker's compensation systems, including Texas, at least show that the first 100 top billing items by code are similar.

RESPONSE: The commission agrees in part. The top 200 codes within workers' compensation represent approximately 84% of the paid amounts, once we extract all CPT codes that do not have a RVU established by McGraw Hill, approximately 160 CPT codes are retained, accounting for approximately 79% of paid amounts. These codes do not represent over-utilization. They do, however, represent statistical significance. These CPT codes represent a significant influence in the charges and costs to the system. It would be contrary to statistically accepted methodology to set fees by using a greater number of codes that have far less significant or influence upon the outcome.

COMMENT: The commenter stated that the Workers' Compensation Research Institute Study (WCRI) which showed Texas fees to be above the median for some other states is outdated and irrelevant because it reflects guidelines in existence before 1994 and at least 11 of those state guidelines have been revised since that time. The commenter also expressed the view that fees should be based on what is fair and reasonable in Texas and not other states.

RESPONSE: The commission disagrees that the WCRI study is outdated and irrelevant. The WCRI study, although published in 1994, is still the most current evaluation of various workers' compensation fee schedules. Numerous fee guidelines have been revised. However, no comparative studies regarding these fee schedules have been published. The commission agrees that fees should be based on Texas data. Texas specific data was purchased from Innervation Technology Corporation and used in the rate setting methodology. Fee guidelines from other states were reviewed as part of the research for this Medical Fee Guideline to analyze Texas fees as compared to other states. Workers' compensation costs are a significant factor in economic development and the overall effect of such costs on Texas' ability to remain competitive must be considered.

COMMENT: The commenter supports the general idea of phasing in changes to avoid market disruption only under the consideration that further fee changes will be undertaken in the near future. The commenter suggested that the Medical Fee Guideline be increased every year by an amount equal to the increase in the PPI for physician services and that an adjustment of relative values be accomplished in two years.

RESPONSE: The commission agrees that this Medical Fee Guideline is a transitional step to a market based system. The commission's intent is to review and revise this guideline on a regular basis. During that review, all fees will be reevaluated.

COMMENT: The commenters felt the recommended reimbursement system would result in increased patient loads trying to make up the reduction in reimbursement and therefore, a reduction in the quality of care. One commenter felt the reimbursement recommended is an inappropriate, inequitable means for maintaining quality and access to services and such methodology should be re-evaluated. Another commenter felt that the standard of care will be jeopardized by any reduction in various components of the fee guidelines. The commenter stated the fees currently in place, when compared with other sources of remuneration, are not excessive and that no reduction in fact is truly justified.

RESPONSE: The commission disagrees that the recommended reimbursement system will result is a reduction in the quality of care provided to injured workers. While not anticipating reductions in the quality of care on a global basis, patterns of practice will be monitored to detect specific instances of declining quality. Although an increase in patient volume does generate an increase in reimbursement, it does not necessarily equate to a more profitable practice due to potential increase in fixed and variable costs. As a result, it is not anticipated that providers will increase patient loads to a degree which will affect quality of care. In addition, not all reimbursements are reduced. Some are increased. Decrease in reimbursements are based on a methodology which adjusts reimbursement based on a gradual transition to a market value system to avoid a sudden drastic effect on providers. Payers and purchasers of medical services are increasingly demanding quality controls implemented and subsequent outcome monitoring. The issue of quality is reflective upon the competency and dedication of these providers to undertake such initiatives. Global volume within workers' compensation is driven by injury/incident rates. Control of volume, patient mix and representative payers is greater outside the workers' compensation arena. Quality indicators (such as successful outcomes), have shown the implementation of strict utilization control, assessment, review mechanisms and quality control initiatives to be efficacious. All of this has occurred while medical services in general have undergone monetary devaluation. Current reimbursement rates are reflective of market driven health care economics and do not suppress access to care.

COMMENT: The commenter requested that non-workers' compensation arrangements between providers and insurance carriers, in particular the level of reimbursement in capitated fee arrangements traditionally used in managed care networks, be considered in setting reimbursement in the Medical Fee Guideline. In addition, the commenter suggested that the impact of deductibles and co-payments in non-workers' compensation systems be considered. The commenter pointed out that this is consistent with the statutory requirement in Texas Labor Code, §413.011(b) that the fee guidelines do not allow payment of a fee in excess of the fee paid in non-workers' compensation cases and that the commission consider the increased security of payment in establishing the fee guidelines.

RESPONSE: The commission disagrees that it would be appropriate to use the data representative of managed care as it is not an accurate reflection of workers' compensation. Managed care programs include deductibles, co-insurance, co-pay or other forms of utilization control or risk sharing mechanisms. Current workers' compensation reimbursement most closely resembles the UCR billing distributions as it exists in a fee-for-service environment. For this reason, the commission chose the Innervation Technology Corporation's database as the basis for its model for creating the new fee schedule. Texas Labor Code, §413.011 requires fee guidelines to be established taking into consideration the fees charged and paid for specific medical services. Since capitated programs within managed care reimburse providers under a per patient per month basis and do not take into account the specific services rendered, capitated data would be inappropriate.

COMMENT: The commenters expressed the view that the proposed reimbursements appear to have a more severe impact on physician versus non-physician HCPs. For example physical medicine codes show a substantial increase, while surgery has remained about the same and radiology has show a significant increase. One commenter suggested that the physicians are under-represented in this undertaking. Another commenter expressed the opinion that the relative unit value methodology is being complicated by using RVUs to set both physician and non-physician reimbursement. The same commenter suggested that non-physicians be separated out and the system reassessed to determine whether the Medical Fee Guideline is proposing to pay non-physicians more than what the market relative position would indicate.

RESPONSE: The commission disagrees. In order to develop reimbursement for medical specialties that are physician driven, i.e. surgery, a comparison was made using TWCC medical billing data and the Innervation Technology Corporation (ITC) database to look at the billing distribution of surgery data. Medical specialties that are non-physician driven, i.e. physical medicine, were compared to the billing distributions of physical medicine data. Data analysis showed that physical medicine reimbursements contained in the 1991 Medical Fee Guideline were significantly under valued in comparison to UCR fee-for-service billing. This level of devaluation is not reflected in a similar comparison of reimbursement for surgical specialties and radiology. With this type of comparison, the specialties are reflective of billing distribution of physicians and non-physicians separately. While RVUs are based upon physician involvement, ITC billing distribution is based upon all HCPs within a fee-for-service billing distribution. A rudimentary separation already exists by the very nature of the medical specialties. The reduction of reimbursement in surgery results from these codes being identified as outliers from UCR fee for service billing data. Radiology was reduced because it fell above the 90th percentile of UCR fee-for-service billing. As a result, simply adjusting fees for inflation does not address these artificially high or low reimbursements and would perpetuate these unjustified variations.

COMMENT: The commenter recommends a physician panel be enacted to contribute to the physician portion of the reimbursement schedule.

RESPONSE: The commission disagrees that such a physician panel should be created. The commission established reimbursement utilizing TWCC data and a database of Texas specific UCR billing data. The commission will not negotiate individual CPT code reimbursement rates. Texas Labor Code, §413.005(b) establishes an advisory panel to the commission called the Medical Advisory Committee (MAC). The medical advisory committee is composed of members appointed by the commission as follows: (1) a representative of a public health care facility; (2) a representative of a private health care facility; (3) a doctor of medicine; (4) a doctor of osteopathic medicine; (5) a chiropractor; (6) a dentist; (7) a physical therapist; (8) a pharmacist; (9) a podiatrist; (10) an occupational therapist; (11) a medical equipment supplier; (12) a registered nurse; (13) a representative of employers; (14) a representative of employees; and (15) two representatives of the general public. One of the purposes of the Medical Advisory Committee is to advise the Medical Review division in developing and administering fee guidelines. By including multiple disciplines of health care when listing the members of the MAC, the legislature has provided for more than just physician input on medical policies and guidelines. There is also a concern that to create a separate panel of medical doctors to address reimbursement rates solely for physicians would defeat the intent of the legislature in creating a broad-based MAC.

COMMENT: The commenter felt that there was not representation from all parties in the drafting of the Medical Fee Guideline. In particular the commenter was concerned about carrier representation.

RESPONSE: The commission disagrees. This guideline has been developed using the highest ideals of open government. During the initial development stages input was sought from a wide variety of interested parties including: Medical Advisory Committee (MAC) members and HCPs independent of the advisory committee. The commission has ensured that public comment was solicited in accordance with the Administrative Procedure Act. The commission proposed the new §134.201 on October 12, 1995, the rule was published in the *Texas Register* on October 20, 1995, and the public comment period closed on November 20, 1995. A five-hour public hearing was held on November 9, 1995 where over 35 commenters gave oral comments on the proposed rule. Approximately 185 written comments were received. Additional input was solicited through the commission's Medical Advisory Committee (MAC) who have consulted their respective associations and specialists throughout the last 18 months. Commenters were received from all segments of the workers' compensation system.

COMMENT: The commenters felt that reimbursement rates in the proposed Medical Fee Guideline do not reflect the greater time, expertise and cost of providing treatment for occupational injuries and illnesses as compared to private, managed care, indemnity or federal systems. One commenter suggested that workers' compensation should be reimbursed at a higher rate, not equal to, statewide usual and customary.

RESPONSE: The commission disagrees that the cost of providing medical care under workers' compensation for occupational injuries and illnesses is greater than non-occupational injuries or illnesses. The commission agrees that the administrative time involved in processing a workers' compensation injury is often greater than for a non-workers' compensation injury. Reimbursement for the evaluation and management codes was increased from the 30th to the 40th percentile of the Innervation Technology Corporation (ITC) data in recognition of administrative costs associated with workers' compensation claims. ITC data, which is based on private fee-for-service billing data, sets the baseline at a higher level of reimbursement than managed care or government reimbursement systems. Lack of deductibles, security of payments and availability of dispute resolutions are additional incentives for HCPs to participate in workers compensation.

COMMENT: The commenters felt that the relative value unit methodology and the phase-in strategies are a proper step and will be an improvement with respect to how this the commission arranges and provides for the purchase of services. One commenter expressed support for the market-based methodology because it reflects the differences in practice costs and training.

RESPONSE: The commission agrees.

COMMENT: A number of commenters requested that the commission revise the ground rules, MARs, and methodology for the Medical Fee Guideline. Suggestions included: use a uniform percentile rate of reimbursement for all medical services, perhaps the 50th or 70th percentile; discard the entire proposed scheduled and revise it using the proper CPT codes and a more rational evaluation; maintain the present fee guidelines until such time that a meeting can be held with representatives from all parties; use the McGraw Hill Relative Values for Physicians, most recent edition with separate set of rules modifying the McGraw Hill relative values for physicians as may be necessary for implementation of the workers' compensation system in the state of Texas; discard the entire proposed schedule and revising it using the proper CPT codes and a more rational evaluation such as the PMIC and/or the Lewin; reevaluate the ground rules and MARs for physical medicine; follow the lead of the Medicare RBVS system and adjust the relative value units for the lumbar fusion; add carefully worded supplemental ground rules; stage or stair-step or make more gradual decreases, maybe five percent, until you reach the reimbursable amount; add a supplement with current AMA/CPT codes; adopt AMA CPT just as it is with the items that are specific to workers' compensation addressed in a supplement.

RESPONSE: The commission disagrees. The suggestion that all medical specialties be reimbursed at a single percentile gives the appearance of being the most equitable method for determining a fair reimbursement rate among the various medical specialties. However, the analysis of the commission data indicated that reimbursement for the various medical specialties was in some cases significantly above and in other significantly below any single percentile. For further discussion of the reasons why use of a single percentile would be inappropriate, see the discussion of methodology earlier in this preamble.

The commission has considered all submitted alternatives to the proposed Medical Fee Guideline and it has been determined that the proposed Medical Fee Guideline as it has been revised, best exemplifies the direction of the commission of gradually moving to a market driven system, while attempting to remain cost neutral to assure access to quality health care. To immediately implement a market based methodology could cause destabilization of the system and limit access to care for injured workers. For further discussion of why the

methodology is appropriate, see the discussion of the methodology earlier in this preamble.

The new Medical Fee Guideline, including the ground rules, enhances the clarity and addresses utilization issues. The commission's decision to normalize reimbursements at the percentile by specialty that caused the least system impact also causes the least destabilization of individual practitioners. Ground rule development has focused on the clarification of issues not resolved by previous guidelines. Many of the McGraw Hill Relative Value Unit's and 1995 CPT coding guidelines have been implemented in the Medical Fee Guideline, but they do not specifically address utilization trends in occupational medicine and concerns relative to workers compensation such as the need for additional modifiers. The foreword of the 1995 CPT manual states that this is a listing of descriptive and identifying codes for reporting medical services and procedures performed by physicians.

Many models were tested. The methodology chosen by the commission for the Medical Fee Guideline reflects the goal of cost neutrality while adjusting reimbursements to a single percentile for each medical specialty section. For further discussion of why the methodology is appropriate, see the discussion of the methodology earlier for this preamble. In development of the Medical Fee Guideline the most recent CPT coding book manual was used, 1995.

Input was solicited from different parties within the workers' compensation system in developing the Medical Fee Guideline. The commission proposed the new §134.201 on October 12, 1995, the rule was published in the *Texas Register* on October 20, 1995, and the public comment period closed on November 20, 1995. A five-hour public hearing was held on November 9, 1995. Approximately 185 written comments were received. Additional input was solicited through the commission's Medical Advisory Committee (MAC) who have consulted their respective associations and specialists throughout the last 18 months.

Practice Management Information Corporation (PMIC) and/or Lewin are not more rational to use for the Medical Fee Guideline. The development of the other two systems include statistical methodology which is comparative to products used when developing the methodology for the Medical Fee Guideline. Considering this fact, the methodology used to develop the Medical Fee Guideline is as valid as the methodology used in developing PMIC and Lewin's systems of reimbursement. The 1991 Medical Fee Guideline was developed without an overall strategy for all of the reimbursements. Because of this fact the commission has to bring fees back in line from the out of line starting point. For further discussion of why the methodology is appropriate, see the discussion of the methodology earlier for this preamble.

All of the Ground Rules for physical medicine have been reevaluated and some sections have been rewritten, but the overall concept of the physical medicine ground rules was considered valid. There is not a direct comparison available between the McGraw Hill data and HCFA RBRVS as the components rated differ.

COMMENT: One commenter stated his understanding that the cost of caring for a workers' compensation patient has dramatically decreased since 1991, however, insurance premiums have stayed at their previous levels or gone up. The commenters also questioned whether this increased the profit for carriers. Other commenters believed with this decrease, reimbursement at the 70th percentile would be reasonable and only incur a 3.0% increase to the system.

RESPONSE: The commission disagrees. The commission's duty is not to determine the adequacy of rates but instead is to set reasonable reimbursement for workers' compensation medical care. The goal is to gradually move toward a totally market-based reimbursement system. Insurance premiums have been reduced from the 1991 bench mark rates. The exact amount and the amount of profit generated is subject to review and control by the Commissioner of Insurance. Texas Department of Insurance data regarding costs and premiums does not substantiate the accuracy of commenters' data.

COMMENT: The commenters expressed support in going to a singular percentile for all specialties.

RESPONSE: The commission disagrees. The suggestion that all medical specialties be reimbursed at a single percentile gives the appearance of being the most equitable method for determining a fair reimbursement rate among the various medical specialties. However, the analysis of commission data indicated that reimbursement for the various medical specialties was significantly above and below any single percentile. Therefore the Medical Fee Guideline sets MARs at the percentile by specialty that caused the least system impact also causes the least destabilization of individual practitioners.

COMMENT: The commenters objected to reimbursements being decreased when their costs of doing business continues to increase. Another commenter recommended that a greater effort be made to see that payments are received by physicians in a timely manner and that the upgrading of fees follow the Consumer Price Index (CPI). In addition, the commenter recommended that electronic billing be implemented to accelerate payment.

RESPONSE: The commission disagrees. The issue of inflation is only one of the economic conditions that drive healthcare economics. Consumer behavior, consumer expectation, focus on acute care versus preventative medicine, excess hospital capacity, medical litigation and defensive medical practice, etc. are all factors that have a profound financial effect upon healthcare and its' delivery. Inflation (CPI) is often singled out as it is an economic condition that, if adjusted for restores the perception of equity and is only one of the economic conditions that drive healthcare economics. However, it is not equitable to select only those economic conditions that weigh in favor of increasing reimbursement for services and costs to the system. The UCR billing data representing fee-for-service billing inherently encompasses all of the various healthcare economic conditions including inflation, without selecting one condition over the other. Fees in the 1991 Medical Fee Guideline were not established using a consistent methodology which resulted in fee variations both higher and lower than market based fees. As a result, simply adjusting fees for inflation does not address these artificially high or low reimbursements and would perpetrate these unjustified variations. Timeliness of payment is addressed in §133.300(h) of this title (relating to Carrier Payment of Bills From Healthcare Providers). The statute requires insurance carriers to make payment in 45 days. TWCC data shows that an average workers' compensation bill is paid within 26 days. Electronic billing is not controlled by the Medical Fee Guideline. However, commission staff is currently exploring options for allowing electronic billing for HCPs.

COMMENT: A commenter expressed concern that any tendency to increase utilization based on new fees or new ground rules was not considered. This commenter's concern was that some changes will lead to increased utilization of some codes and thus to increased costs, and another commenter felt that the effect of the Medical Fee Guideline will not be cost neutral, but cost negative. A commenter expressed the opinion that the proposed fee guideline will change utilization of services, therefore the data collected in 1993 and 1994 is not reflective of the guidelines effect in the future. Another commenter requested that the rule provide a mechanism for active review for the change in utilization under the new guideline with prompt recommendation for action to correct any problems. Another commenter acknowledged that because the new rule will change application of procedures, the cost may be different than initially expected.

RESPONSE: The commission disagrees. A revenue neutral methodology was chosen as the basis for revision of the Medical Fee Guideline because it is the most representative of the historical baseline upon which gradual change could be implemented. It allows transition to a market driven system while minimizing the potential for market destabilization. In capturing 1993 through 1994 data, the commission has captured utilization of service for that time period. Utilization of services in future years may be different; however, as past behavior is the best predictor of future behavior, it is reasonable to use these utilization trends as a basis for Medical Fee Guideline revision. Analysis of reports of the medical billing database to date reveals steady trends in code utilization. However, the commission intends to conduct regular reviews of medical data to detect any unanticipated changes in code utilization trends that may occur with the new Medical Fee Guideline. These trends will be taken into consideration in the future guideline revisions.

COMMENT: A commenter supported the approach of making guidelines "expenditure neutral" for the employers of Texas who ultimately pay the bill for this system. Another commenter agrees with the underlying assumption that the revised guideline should be cost neutral, bringing fees up or down to continue our gradual alignment with the national norm. This commenter felt if a fee for a particular code is raised, a decrease should occur in another code to ensure that we do not increase costs.

RESPONSE: The commission agrees that the expenditure neutral philosophy is a reasonable starting point for setting MARs because it allows a more gradual transition to a market-based system and maintains access to quality health care. Expenditure neutral philosophy did not dictate individual fees and in fact the expenditure neutral goal was not attained. The commission projects a financial system increase of approximately $25 million. Part of keeping the system balanced is keeping Texas competitive with other states. Fees have not been adjusted up or down to align with a national norm. Rather, adjustments have been based on Texas specific fee for service data distributions. Reimbursement increases or decreases are the result of the adjustment of reimbursements to reflect a move toward a single percentile specific to each specialty section in the Medical Fee Guideline.

COMMENT: A commenter recommended that we move toward a reasonable and customary type of situation as opposed to keeping expenditure-neutral. Other commenters questioned whether an expenditure neutral basis for the Medical Fee Guideline would comply with the commission's mandate to review and revise the guidelines to reflect a fair and reasonable reimbursement and if this is the most equitable reimbursement system, particularly when the guideline being modified represents fees set as fair and reasonable in 1991 or before. Another commenter believes the assumption of budget neutrality is fatally flawed if only because the newly imposed utilization controls are designed to decrease total cost to the system. Another commenter disagreed with using cost neutrality as a basis for the Medical Fee Guideline.

RESPONSE: The commission agrees in part. The revised Medical Fee Guideline is an attempt to move toward a market based reimbursement system. The reimbursement rates contained within the 1991 Medical Fee Guideline are significantly above or below the prevailing reimbursement rates of other payers. Although the market place is probably the most accurate indicator of what is a fair and reasonable reimbursement, the particular circumstances of a Medical Fee Guideline revision should also be considered. This Medical Fee Guideline revision involves revising reimbursements which were established in 1991 under a relative value methodology. Changing to a market-based methodology results in radical changes in some reimbursements because the 1991 Medical Fee Guideline did not reflect market values. An immediate transition to a market-based reimbursement methodology could result in destabilization of the entire system. Therefore, in this situation, an immediate transition would not result in fair and reasonable reimbursements. This revision of the Medical Fee Guideline had a goal of cost neutrality and to keep Texas toward the median state's workers' compensation reimbursement rates. Total system impact is predicted to be less than 5.0%. A gradual phase-in process was considered the best method for implementing any change that directly affects HCP reimbursement, as any rapid changes could create financial destabilization within individual and group medical practice, and within medical specialties. Gradually adjusting reimbursement for services to better reflect market economics, while using expenditure neutrality as a starting point to avoid destabilization of the system and maintaining access to care and implementing cost containment, fulfills the mandate of the statute. In addition, a rapid and significant change in reimbursement could affect the injured workers' access to care. The commission, by using UCR billing data representing fee-for-service as a primary ingredient in the development of the Medical Fee Guideline, causes this system to inherently encompass all of the various healthcare economic conditions without selecting one condition over the others. The commission has considered all submitted alternatives to the proposed Medical Fee Guideline and has determined that the adopted Medical Fee Guideline best exemplifies the direction of the commission to gradually move to a market driven system, attempting to remain cost neutral and normalizing reimbursement while ensuring access to care.

The following comments were received regarding the valuation of I Codes.

COMMENT: Many commenters objected to the decrease in reimbursement for certain CPT codes. These codes were considered by commenters to be under valued 15755, 17242, 20331, 20610, 20808, 20816, 22214, 22220, 22222, 22224, 22506, 22556, 22612, 22625, 22830, 22842, 22845, 22850, 23130, 23412, 23420, 24410, 26350, 26410, 28296, 28351, 29826, 62273, 62275, 62276, 62289, 63005, 63030, 63650, 63655, 63658, 63660, 63675, 63685, 63688, 63690, 63691, 63740, 63750, 63780, 64420, 64440, 64442, 64443, 64445, 64510, 6 4520, 95860, 95861, 95863, 95864, 95880, 95881, 95882, 95883, 97032, 98925, 98926, 98927, 98928, and 98929. Other commenters pointed out that in some cases the reimbursement appeared to have no relation to the difficulty or complexity of the procedure and in some cases the same procedure was reimbursed less when coupled with additional procedures. Other commenters saw inequality in what they felt was arbitrary reduction of up to 70% from the current guideline. Some commenters viewed the reduction as an attempt to curtail these procedures and predicted that the proposed fees would effectively stop the practice of pain management. One commenter pointed out that some of these codes listed were listed as I codes in McGraw Hill Physicians Relative Value.

RESPONSE: The commission disagrees that changes in reimbursements for these CPT codes is warranted. The codes referred to by the commenters have been reduced from the 1991 Medical Fee Guideline to bring them more in line with a selected percentile within that codes medical specialty group. As the 1991 Medical Fee Guideline did not involve the degree of data collection, financial modeling, and UCR analysis as the proposed fee guideline, many codes we're set artificially high. Many of the codes mentioned a re designated by McGraw Hill as "I" codes. The commission acknowledges that the creation of the proposed Medical Fee Guideline, in part uses the relative values as listed in the 1995 edition of Relative Value for Physicians and contains relative values units (RVU's) that are designated as "I" (interim) codes. Codes designated as "I" codes do not meet the highest level of confidence required by McGraw Hill, however they do meet an appropriate level of confidence needed to establish the relative value of the service. Codes that did not meet an acceptable level of confidence to establish a relative value are identified as RNE (relativity not established) codes. The commission acknowledges that all methods used in the development of RVU's involve statistical modeling. Common among all developers of RVU's is the issue of varying confidence levels, as it is an inherent characteristic of statistical modeling. McGraw Hill is seen as a respected information source regarding relative values because they do acknowledge and fully disclose that these conditions exist. A full explanation of the methodology used in determining fees in the Medical Fee Guideline is contained previously in the preamble.

The following changes were made by the commission for consistency and clarification, or to correct typographical or grammatical errors.

After review of the guideline it was determined that modifier -56 should be used when billing for pre-operative history and a physical is performed by a healthcare provider (HCP) other than the doctor who performed the surgery. In addition, due to the deletion of the ground rule using the modifier -OR, the reference to this modifier has been deleted. Therefore Surgery Ground Rule Section (I)(A)(1)(a) has been rewritten to state:

"If the pre-operative history and physical is performed by a HCP other than the doctor performing the surgery, then it shall be billed using modifier -56. "

Throughout the Medical Fee Guideline the words "should", "will", and "must" have been changed to "shall" for consistency in situations where the provision is a requirement. This change also occurred in sections taken directly from the American Medical Association (AMA) CPT manual for consistency throughout the Medical Fee Guideline.

Although modifier -MP is mentioned in the Medicine Ground Rules this modifier has been added to the E/M modifiers because -MP is only used with E/M codes.

In Medicine Ground Rules Section (I)(A)(10)(d) the last phrase referring to the Orthotics/Prosthetics Ground Rules has been deleted due to the deletion of the O/P Ground Rules. Subsection (d) now reads:

"The codes for orthotics (97500-97501) and prosthetics (97520-97521) training shall be used for instruction and training. The HCPCS codes shall be used for the custom fabrication of the orthosis or prosthesis."

In the General Instructions Ground Rules introduction, the phrase referring to the O/P Ground Rules has been deleted due to the deletion of the O/P Ground Rules.

In the Medicine Ground Rules, section (II)(A) has been rewritten to clarify what is covered under interdisciplinary program reimbursement and to define the term "HCP" in an interdisciplinary program environment.

"Introduction: The commission recognizes the need for injured workers to participate in established programs in order to restore function and reduce pain. In order to qualify for reimbursement, the available programs shall meet the criteria of one of the four programs described below except for catastrophic head injury programs. Please refer to the applicable treatment guidelines and the preauthorization rule for additional requirements. All services performed by the interdisciplinary core team and other services as part of the program shall be inclusive in the reimbursement of the program. Whenever HCP is used in the description of the services of the program, it is a licensed HCP."

The fees for twelve CPT codes were calculated using incorrect RVUs due to clerical error. The corrected values for these CPT codes are as follows: CPT code 15792, $506; CPT code 73225 S, $160 (professional component); CPT code 86340, $30 (technical component); CPT code 95951, $547; CPT code 98925, $39; CPT code 98926, $45; CPT code 98927, $52; CPT code 98928, $58; CPT code 98929, $64; CPT code 99000, $19; CPT code 99001, $10; and CPT code 99002, $10.

To clarify that modifier -52 could be used for surgical procedures, this modifier was added to the list of modifiers in the Surgical Ground Rules. This was rewritten as follows:

"-52 Reduced Services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the HCP's election. Under these circumstances, the service provided can be identified by its procedure code with the addition of modifier "-52". DOP is required."

The following publications and interviews comprise a bibliography for the this preamble and the *Medical Fee Guideline 1996*: Publications-*Benchmarks for Designing Workers' Compensation Medical Fee Schedules*, Workers' Compensation Research Institute, December 1993; *A Physician's Guide to the Complete Nation Medicare Fee Schedule*, 1993 Edition; *Relative Values for Physicians*, McGraw-Hill, 19 94 and 1995 editions; *Conversion Factor Report*, McGraw-Hill, 1994-95; *Managed Care Today*, Peter R. Korgstredt, 1994; *Making Managed Care Work*, Peter Borland, 1993; *Health Insurance and Answers*, John Reynolds and Robin Bischoff, 1990; *Economics of Healthcare*, Phillip Jacobs, 1991; *Social Insurance and Economic Security*, George E. Rejeda, 1988; and *Essentials of Healthcare*, William O. Clevenly, 1992; and Interviews-Texas

Department of Insurance, Professional Liability Section; University of Texas, Economic Research and Analysis Division; University of Texas, Bureau of Business Research Department; Florida Medical Association, Department of Medical Economics; Florida Medical Association, Physician Reimbursement Section; Florida Department of Labor and Employment Security, Department of Research and Education; and North Dakota Workers' Compensation Bureau, Department of Research and Analysis.

The new section is adopted pursuant to the Texas Labor Code, §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; the Texas Labor Code, §408.021, which entitles injured employees to all health care reasonably required by the nature of the injury as and when needed; the Texas Labor Code, §413.007, which requires the commission to maintain a statewide database of medical charges, actual payments, and treatment protocols; the Texas Labor Code, §413.011, which mandates that the commission by rule establish medical policies and guidelines, and the Texas Labor Code, §413.012, which requires review and revision of the medical policies and fee guidelines at least every two years.

§134.201. Medical Fee Guideline For Medical Treatments and Services Provided Under the Texas Workers' Compensation Act.

(a) The commission adopts by reference herein, the *Texas Workers' Compensation Commission Medical Fee Guideline 1996*. The *Guideline* shall be effective for all medical treatments, services, durable medical equipment and pharmaceuticals provided on or after April 1, 1996. Medical treatments, services, and durable medical equipment provided prior to April 1, 1996 shall be subject to the *1991 Texas Workers' Compensation Commission Medical Fee Guideline* (December 1991 Version). Pharmaceuticals provided prior to April 1, 1996 shall be subject to §134.501 of this title (relating to the Pharmaceutical Fee Guideline). Copies of both guidelines may be obtained from the Publication Department of the Texas Workers' Compensation Commission, 4000 South IH-35, Southfield Building, Austin, Texas 78704.

(b) An insurance carrier or health care provider which willfully or intentionally violates the provisions of this rule commits an administrative violation under Texas Labor Code, §415.002 or §415.003 and may be assessed a penalty. In addition, an insurance carrier or health care provider which repeatedly violates these statutory provisions may be assessed a penalty not to exceed $10,000 under the Texas Labor Code, §415.021, and may be subject to the sanctions specified in the Texas Labor Code, §415.023 including, but not limited to, restriction or revocation of the right to receive reimbursement under the Texas Workers' Compensation Act.

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

Issued in Austin, Texas, on March 4, 1996.

TRD-9602987 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Effective date: April 1, 1996

Proposal publication date: October 20, 1995

For further information, please call: (512) 440-3700

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Part III. Texas Certified Self-Insurer Guaranty Association

Chapter 181. By-laws

• 28 TAC §181.1

The Texas Certified Self-Insurer Guaranty Association adopts an amendment to §181.1, concerning the By-laws of the Association, without changes to the proposed text as published in the November 17, 1995, issue of the *Texas Register* (20 TexReg 9534).

The amendment allows the Annual Meeting of the Association to be called in any month of the year, allows directors to be elected at times other than the Annual Meeting, revises the membership of the Board of Directors and extend the date upon which the Trust Fund must be funded to conform with recent legislation (House Bill 1089, 74th Legislature, 1995), provide that excess assessments for an impaired certified self-insurer shall be used for the benefit of the Association, require that the Trust Fund be paid to the Texas Workers' Compensation Commission on termination, and deletes obsolete language.

The amendment will conform the By-Laws of the Association with statutory provisions, provide greater flexibility in calling annual meetings of the Association, assure that the assessments for an impaired certified self-insurer shall be used for the benefit of the Association, and assure that the Trust Fund will be paid to the Texas Workers' Compensation Commission on termination.

No comments were received regarding adoption of the amendment.

The amendment was finally adopted by the Board of Directors of the Association and approved by the Texas Workers' Compensation Commission on February 15, 1996. After adoption by the Board, the amendments were ratified by a majority vote of the members of the Association by mail-in ballot.

The amendment is adopted under the Labor Code, Chapter 407, Subchapter G, §407.123, which authorizes the Board of Directors of the Association, subject to the approval of the Texas Workers' Compensation Commission, to adopt rules necessary to operate the Association.

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

Issued in Austin, Texas, on March 12, 1996.

TRD-9603489 Judy Roach
Executive Director
Texas Certified Self-Insurer Guaranty Association

Effective date: April 2, 1996

Proposal publication date: November 17, 1995

For further information, please call: (512) 322-2514

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 324. Used Oil

Subchapter A. Used Oil Recycling

• 30 TAC §§324.1-324.21

The Texas Natural Resource Conservation Commission (commission) adopts new §§324.1-324.21, concerning used oil recycling. Sections 324.2, 324.3, 324.5, 324.6, 324.7, 324.11, 324.12, 324.13, 324.14, 324.15, 324.18, and 324. 21 are adopted with changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8970). Sections 324.1, 324.4, 324.8, 324.9, 324.10, 324.16, 324.17, 324.19, and 324.20 are adopted without changes and will not be republished. Subchapter B, §§324.50-324.54 is withdrawn from consideration for adoption, while the staff considers other options.

The new chapter is primarily adopted to conform with the new United States Environmental Protection Agency (EPA) 40 Code of Federal Regulations (CFR) Part 279, Standards for the Management of Used Oil.

The new 40 CFR Part 279 extends the EPA's regulation to all nonhazardous used oil, used oil made characteristically hazardous by use (rather than by mixing), used oil recycled by means other than burning for energy recovery (in addition to used oil burned for energy recovery), and used oil generated by municipal or industrial generators. It also regulates do-it-yourself (DIY) changer used oil (household used oil) after collection. The portion of 40 CFR Part 279 addressing the burning of used oil for energy recovery was effective March 8, 1993. The remainder of 40 CFR Part 279 becomes effective in Texas with the adoption of this implementing rule. Senate Bill 1683, 74th Texas Legislature, 1995, made statutory changes to Texas Health and Safety Code, Chapter 371, Used Oil Collection, Management, and Recycling, to make implementation of 40 CFR Part 279 possible. Texas Health and Safety Code, §371.028 now states: **"Unless otherwise required by federal or state law,** the rules, standards, and procedures implemented by the commission must be consistent with and not more stringent than the federal used oil management standards."

The commission has prepared a Takings Impact Assessment for the used oil rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment: The purpose of the new rule, old rule sections repeal, and rule amendments is to fully implement 40 CFR Part 279, Standards for the Management of Used Oil. The new rule, old rule sections repeal, and rule amendments substantially advance this specific purpose by providing a state rule to implement the federally mandated rule. Promulgation and enforcement of these rules will not affect private real property because the rules only apply to used oil management activities that do not affect property values. When new, more stringent Federal requirements are promulgated or enacted, such as 40 CFR Part 279, the State must adopt equivalent rule requirements (57 FedReg 41604, September 10, 1992).

A public hearing was held on November 14, 1995 in Austin. Texas Utilities Services, Inc. provided comments at the hearing (later confirmed in writing). There were no other commenters at the hearing.

The comment period closed December 4, 1995. Written comments were received from: Arter & Hadden; Brown Mc Carroll & Oaks Hartline; Central & South West Services; City Public Service; City of Wichita Falls; Entergy Services for Gulf States Utilities Co.; Exxon Co.; Gross Associates; Houston Lighting & Power; Murphy Chev-Olds-Pont; Nortex Regional Planning Commission; Patton Boggs, L.L.P., for the Waste Oil Heating Manufacturers Assoc.; Pennzoil Co.; Southwestern Public Service Co.; Syd Litteken Design Concepts; Texas Chemical Council; Texas Legacy Co.; Texas Mid-Continent Oil & Gas Assoc.; Texas Utilities Services; Used Oil Grant Program Advisory Committee; and commission staff.

With regard to §324.2 on definitions, City Public Service noted that the definition of "Used oil transfer facility" in 40 CFR §279.1 includes the statement: "Transfer facilities that store used oil for more than 35 days are subject to regulation under Subpart F of this part." Subpart F contains the requirements for used oil processors and rerefiners. The commenter asked that this part of the federal definition be deleted. The commission cannot make the state rule less stringent than the federal rule. No change could be made in response to this comment.

A definition of "Burning for energy recovery" was included in the proposal. Brown Mc Carroll & Oaks Hartline, Exxon, Southwestern Public Service, Texas Chemical Council, and Texas Mid-continent Oil & Gas Association objected to inclusion of this definition in the rule. The commission is deleting this definition from the adopted rule.

A definition of "Impervious to used oil" was added to the rule proposal for clarification. Central & South West Services, City Public Service, Exxon, Gulf States Utilities, Houston Lighting & Power, Texas Mid-continent Oil & Gas Association, and Texas Utilities felt that the commission was attempting to be more stringent than the federal rule through the definition because the definition did not include the word "sufficiently" from the internal rule language. Because it was not the commission's intent to make the rule more stringent through the definition, the word "Sufficiently" has been added to the definition title.

A definition of "Secondary containment" was also included in the rule proposal. Central & South West Services, City Public Service, Exxon, Gulf States Utilities, Southwestern Public Service, Texas Chemical Council, Texas Mid-continent Oil & Gas Associates, Texas Utilities, and the Used Oil Grant Program Advisory Committee felt that the commission was attempting to be more stringent than the federal rule language because "or equivalent" secondary containment and "sufficiently" impervious were in the rule language and not added to the definition. The allowance of "equivalent" secondary containment was added in a change to 40 CFR Part 279 (58 FedReg 26426, May 3. 1993). Because it was not the commission's intent to be more stringent than the federal rule through the definitions, the words "or equivalent secondary containment" and "sufficiently" have been added to the definition.

On §324.3, Central & South West Services, Gulf States Utilities, Houston Lighting & Power, and Texas Utilities recommended that an exemption from transporter registration be added for transport of spilled used oil in an emergency. The commission is not at liberty to be less stringent than the federal rule, so no change was made.

Also on §324.3, the Texas Chemical Council and Texas Mid-continent Oil & Gas Association asked that the commission justify the need for all of the proposed provisions of this section. Based on those comments, the commission will delete the proposed §324.3(1) and the remaining paragraphs of this section will be renumbered in the adopted version, although this provision does represent an accurate description of how the EPA interprets their rule with regard to burning sorbents for energy recovery. The commission will retain the provision in proposed §324.3(2) to fill a hole in the EPA rule; there is no way to properly manifest used oil made hazardous by mixing with listed hazardous wastes without an EPA hazardous waste number and 40 CFR Part 279 does not provide one. With regard to §324.3(3), the Texas Legacy Company requested that the commission further clarify the language on mixture of hazardous wastes with used oil. The commission has retained §324.3(3), because it is particularly difficult to understand how EPA intended the mixing provisions of 40 CFR Part 279.10(b) (relating to Mixtures of used oil and hazardous waste) to be interpreted, and this agency has attempted to further clarify the provisions of §324.3(3) as requested by the commenter. The commission will retain the clarification in the proposed §324.3(4) because the federal rule language on this point is particularly prone to a misinterpretation that would be more stringent than what EPA intends. For example, the rule states: "Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter." It is easy to misinterpret that such rule provisions require "all" used oil tanks and containers to meet 40 CFR Part 264 or 265 requirements. EPA intends these provisions to allow storage in used oil

tanks and containers not subject to 40 CFR Part 264 or 265, too. A statement further clarifying this point has been added. In response to a comment from Texas Utilities, a new paragraph has been added to clarify that 40 CFR Part 279 and this chapter do not apply to used oil until it is a spent material, i. e., any material that has been used and as a result of contamination can no longer serve the purpose for which it is intended without processing.

On §324.4(2)(B), the Texas Legacy Company questioned the commission's authority to add the words "other than sorbents without free-flowing oil" to the prohibition against mixing used oil with waste going to a landfill (derived from Texas Health and Safety Code, §371.041(b)(2)). The commission acknowledges that certain used oil sorbents cannot be burned for energy recovery or recycled. Even though the commission was only seeking to clarify intent, this language will be deleted from this section in favor of the language of the Texas Health and Safety Code.

On §324.4(4), Arter & Hadden stated that a clarification was added under Senate Bill 1683 to make clear that a used oil filter cannot be placed in or accepted for disposal in a landfill and recommended adding this sentence: "For purposes of this subsection, a used oil filter is not an item of scrap, used or obsolete metal." As proposed, this paragraph of the section contains the exact wording of Texas Health and Safety Code, Chapter 371 §371.041(d), as modified by Senate Bill 1683. The commission will not make an unauthorized addition to the state statute language in the rule that could possibly make the rule more stringent than state law. Commission rules are already in place to prevent used oil filters from going into municipal landfills.

On §324.5(b), a mail code was added to the commission address and throughout the rule where a commission address appears.

On the proposed §324.6, the Texas Legacy Company said that the commission should add a provision making it a violation for a generator not to give his used oil to a registered entity. The commission points out that the rule can be no more stringent than the federal rule, and the federal rule (which has been adopted by reference) already states in 40 CFR §279.24 that "generators must ensure that their used oil is transported only by transporters who have obtained EPA identification numbers." No change was made in response to this comment.

With regard to proposed §324.6(1), the City of Wichita Falls, Gross Associates, Murphy Chev-Olds-Pont, Nortex Regional Planning Commission, Syd Litteken Design Concepts, and Waste Oil Heating Manufacturers Association objected to inclusion of the requirement for a space heater to meet the air requirements of Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification). Some commenters alleged that this air requirement violated the statutory prohibition against the rule exceeding federal requirements in 40 CFR Part 279. However, the statutory prohibition in Texas Health and Safety Code, §371.028 begins: "Unless otherwise required by federal law or state law..." The air requirement was inserted into this section as a reminder of its existence; it has existed since the Texas Clean Air Act was amended in 1971. However, in response to these comments, this reminder of the air requirements was deleted from the adopted Chapter 324; and an air standard exemption for used oil space heaters will be developed to make compliance with Chapter 116 less burdensome.

On proposed §324.6(2) (now incorporated into §324.6 due to the previous deletion), Central & South West Services and Texas Utilities requested that the provision be deleted that a person who changes used oil at a customer's home or business and removes the oil from the site is a generator. These utilities do not want to become the generators of large quantities of used oil removed from customer's electrical transformers. This was originally placed in the rule in the interest of small service businesses that change and transport small quantities of used oil. Some small businesses would find it economically disastrous to become subject to transfer facility requirements; and EPA guidance allows for other entities to assume the role of generator. A generator does not have an accumulation time limit under the federal rule and would therefore not become a transfer facility by storing used oil for greater than 35 days to accumulate a recyclable quantity. This provision of the commission rule is amended to make it optional for such a used oil changer that removes the oil from the site to become the generator instead of the site owner or operator.

On §324.7, the Texas Legacy Company requested that the commission standardize the sign that must be posted by collection centers and that the exemption from the fee on the first sale of automotive oil for collection centers (Texas Health and Safety Code, §371.062(a)(2)(C)) be extended to other entities responsible for the recycling of large amounts of used oil. The sign to be posted by collection centers will be standardized by the commission. It is beyond the authority of the commission to modify the Texas Health and Safety Code fee exemption provisions.

On §324.7(1)(B)(i) and §324.7(2)(B)(i), Houston Lighting & Power said that the biennial registration requirement for collection facilities was too burdensome, noting that the federal rule only requires one time registration. Texas Health and Safety Code, §371.024(b)(1) specifically requires biennial registration for collection facilities of used oil. The commission cannot be less stringent than state law, so no change was made to the biennial registration requirement. However, collection center registration requirements were clarified at the request of another commenter.

On §324.7(1)(D) and §324.7(2)(D), the provisions were revised to make them consistent with each other on the report due date and to add that a report form will be provided by the commission. The only efficient way to review, store, and retrieve reported information is to have it reported on a form in a consistent format and location.

With regard to §324.11, the Texas Legacy Company noted that Texas is a border state and commented that the commission should clarify its policy on the transportation of used oil leaving and arriving in Texas. In response to this comment, the commission points out that 40 CFR §279.40(b) states: "Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this subpart from the time the used oil enters and until the time it exits the United States." The commission feels that this requirement, adopted by reference, sufficiently clarifies our regulatory position on transportation of used oil into and out of the United States across the Texas border.

On §324.11(2), City Public Service, Houston Lighting & Power, and Southwestern Public Service commented that the biennial registration requirement for transporters and transfer facilities was more stringent than the federal requirement for one time registration. Texas Health and Safety Code, §371.026(a)(1) specifically requires the biennial registration. The commission cannot be less stringent than state law, so no change can be made in response to this comment. However, the registration requirements were clarified and the clarifications preclude some registration duplication. The Texas Legacy Company suggested requiring the name of the company to be clearly, legibly, and permanently affixed to all registered vehicles. This commenter's suggestion could not be incorporated because the commission is prohibited from being more stringent than the federal rule by state law. The same commenter recommended that transporters which are common carriers be exempt from the registration provisions if the vehicle derives 80 percent of its revenue from transport of materials other than used oil and that railroads and waterborne transporters be exempt from registration. These comments could not be incorporated because the commission is not allowed to be less stringent than the federal rule. The same commenter stated that it is important that it be a violation of these rules if used oil is stored at an unregistered site for over 24 hours. Transporters that store used oil for longer than 24 hours are already required to register as transfer facilities per 40 CFR §279.45(a) and §279.42. Therefore, no change was required in response to this comment. The same commenter asked if out-of-sate transporters are required to register with the commission or if the commission will accept the EPA registration. The commission will accept the validity of out of state transporter registrations with the EPA; however, out of state transporters will also have to register with the commission. The same commenter suggested that the commission have one registration number for each site. The commission has been working toward this goal and will continue to do so.

On §324.11(3), comments were received from Central & South West Services, City Public Service, Gulf States Utilities, Houston Lighting & Power, Southwestern Public Service Company, Texas Mid-continent Oil & Gas Association, Texas Utilities, and the Used Oil Grant Program Advisory Committee. In response to the comments received, the commission has decided to delete this portion of the rule requirements from the adoption package to allow staff to consider additional financial responsibility options. The commission acknowledges that demonstra-

tion of financial responsibility is a statutory requirement. The commission will form a workgroup to continue the process of developing financial responsibility rule requirements, and the commission intends to adopt such rule requirements at a future date. In the meantime, the commission will enforce the 40 CFR Part 279 requirement, adopted by reference, to clean up a used oil release upon detection.

On §324.11(4) (now renumbered as §324.11(3)), Houston Lighting & Power commented that a single annual report should be allowed from a single company. The commission agrees with this comment and has added such an amendment to all sections with reporting requirements, except §324.7 on collection centers where the commission feels an annual report on each collection site is needed to assure each site is still active and collecting household used oil. The Texas Legacy Company recommended adding requirements for out of state shipment receipts to be included in the required reports for the receiving entity. The federal rule already requires that receivers record the address of the transporters and generators providing shipments to them; the address will indicate which of these shipments are coming from out of state. The commission believes there is no need to make a change in response to this comment.

The same commenter felt that the 40 CFR Part 279 tracking system that utilizes records to track used oil shipments was inadequate. The commission could not respond to this comment by incorporating a more stringent tracking system, such as manifesting, because the state law does not allow the commission to be more stringent than the federal rule.

On §324.12, Texas Utilities suggested that facilities that are considered processors for the sole reason of storing used oil for more than 35 days be excluded from being processors as specified in 40 CFR Part 279. This suggestion could not be incorporated because the commission is not allowed to be less stringent than the federal rule. The Texas Legacy Company said that a used oil transfer facility should have the name and address of the facility clearly identified by the use of a sign which is easily read from the opposite side of the road right of way. The commission could not incorporate this requirement because it is prohibited by state law from being more stringent than the federal rule.

On §324.12(2), the Texas Legacy Company said that the physical address of the processing facility or rerefinery should be included on the registration forms. The registration forms will include the physical address. Also, City Public Service, Houston Lighting & Power, and Southwestern Public Service Company commented that the biennial registration requirement for processors and rerefiners was more stringent than the federal requirement for one time registration. Texas Health and Safety Code, §371.026(a)(1) specifically requires biennial registration. The commission cannot be less stringent than state law, so no change can be made in response to this comment. However, the registration requirements were clarified and the clarifications eliminate some duplication.

On §324.12(3), Central & South West Services and Texas Utilities requested that the word "adulterated" in the last sentence be replaced by the word "contaminated". This change has been made. Southwestern Public Service Company felt that an analysis plan should not be required at a facility that became a processor by exceeding the 35 day storage time limit and was only storing its own used oil. Wording has been added that a facility that only processes its own oil and uses adequate process knowledge instead of analysis to prove it meets rule requirements need not prepare an analysis plan.

In response to a previously mentioned comment, §324.12(4) has also been amended to allow a single company to submit a single report summarizing each type of used oil activity, other than collection center activity.

On §324.13(2), Houston Lighting & Power and the Texas Chemical Council commented that the biennial registration requirement for burners of off-specification used oil was more stringent than the federal requirement for one time registration. Texas Health and Safety Code, §371.026(a)(1) specifically requires biennial registration. The commission cannot be less stringent than state law, so no change can be made in response to this comment. However, some clarifying changes have been made and these changes should eliminate some duplication.

With regard to proposed §324.13(3), the City of Wichita Falls, Gross Associates, Murphy Chev-Olds-Pont, Nortex Regional Planning Commission, Syd Litteken Design Concepts, and Waste Oil Heating Manufacturers Association objected to inclusion of the requirement for a space heater to meet the air requirements of Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification). Some commenters alleged that this air requirement violated the statutory prohibition against the rule exceeding federal requirements in 40 CFR Part 279. However, the statutory prohibition in Texas Health and Safety Code, §371.028 begins: "Unless otherwise required by federal law or state law..." The air requirement was inserted into this section as a reminder of its existence; it has existed since the Texas Clean Air Act was amended in 1971. However, in response to these comments, this reminder of the air requirements was deleted from the adopted Chapter 324; and an air standard exemption for used oil space heaters will be developed to make compliance with Chapter 116 less burdensome.

The Texas Chemical Council objected to the requirement for burners to submit an annual report per proposed §324.13(4) (now renumbered to §324. 13(3) due to the previous deletion). The annual reporting is specifically required per Texas Health and Safety Code, §371.026(a)(2), and the commission cannot be less stringent than state law. No change could be made in response to this comment.

On §324.14, the Texas Legacy Company suggested that marketers be required to obtain an independent laboratory analysis of the used oil that they accept. This comment could not be incorporated because the commission is not allowed by state law to be more stringent than the federal rule. Also, City Public Service commented that the biennial registration requirement for marketers was more stringent than the federal requirement for one time registration. Texas Health and Safety Code, §371.026(a)(1) specifically requires biennial registration. The commission cannot be less stringent than state law, so no change can be made in response to this comment. However, the commission did clarify the registration requirements and the clarification will eliminate some potential duplication.

With regard to §324.15, Central & South West Services, Exxon, and Texas Mid-continent Oil & Gas Association felt that the requirement to make sure that adequate quantities of sorbent materials are available on site at all times and are used to contain used oil spills or leaks during normal activities was just common sense and would be included in any existing spill response plans. Therefore, the commission is deleting the first sentence of the section as proposed by the commenters. Also, City Public Service, Central & South West Services, Exxon, Gulf States Utilities, Houston Lighting & Power, Southwestern Public Service Company, Texas Chemical Council, Texas Mid-continent Oil & Gas Association, Texas Utilities, and the Used Oil Grant Program Advisory Committee questioned the 25 gallon reporting quantity, favored a historical Texas 210 gallon spill reporting requirement for crude oil in another proposed general spill rule, and/or questioned why used oil was different from crude oil. Used oil is different from crude oil in that it contains additional additives for its lubrication function and, when used in internal combustion engines, it picks up additional contaminants that tend to make it toxicity characteristic (TC) hazardous. EPA indicates that it has been a significant environmental problem in the past (56 FedReg 48033-48034, September 23, 1991). To encourage recycling, the new federal rule allows toxicity characteristic hazardous used oil to be managed in the same manner as nonhazardous used oil. The federal rule, 40 CFR Part 279, also reaffirms that used oil storage in underground tanks is subject to 40 CFR Part 280. 40 CFR §280.53(a)(1) and 30 TAC §334.75(1) set a general used oil spill reporting requirement for underground storage tanks of 25 gallons. Further research into the derivation of the 25 gallon spill reporting requirement in 40 CFR Part 280 indicates that it was specifically developed by EPA for used oil spills (April 17, 1987, 52 FedReg 12752). In response to the comments received, the commission has revised §324.15 of the rule to make the 25 gallon reporting requirement only applicable to the automotive used oil spills at do-it-yourselfer used oil collection centers that may not know how to properly react to such spills and to used oil stored in underground storage tanks, as required by the federal and state rules. The commenters also thought that the reporting requirements would be burdensome. Therefore, the reporting requirements have been further clarified as a notification requirement, where notification can be made by telephone, in person, or by any other method approved by the commission. The overall language was also revised to make it more compatible with current spill reporting practice and the general spill rule proposed by the commission as a separate rulemaking (a new Chapter 327).

On §324.17(b), Southwestern Public Service Company felt that the $20,000 fine limit for repeat offenses under the criminal penalty provisions was too high. This fine value was derived from Texas Health and Safety Code, §371. 042. The commission requirements cannot be less stringent than state law, so no change was made in response to this comment.

On §324.18, the Texas Legacy Company stated that as an incentive for local governments to pursue civil penalties for violations under this section, the fines recovered in a suit brought by the local government should be retained by the local government. However, if the state brings suit within the jurisdiction of a local government, and the local government aids in the preparation and prosecution of the violation, then the state and the local government should divide the recovered penalty. In response to this comment, the commission points out that Texas Health and Safety Code, §371.043(b) already addresses how the state and local governments shall divide civil penalties recovered and §324.18(b) of the commission rule is derived from that statutory provision. The commission has no statutory authority to broaden that penalty sharing provision, so no change was made in response to this comment.

On §324.18(c), a deletion was made to correct a cross-referencing error.

On proposed §324.21, due to the comments received, the commission has decided to delete this rule section while a workgroup considers additional closure options. The commission acknowledges that demonstration of financial responsibility is a statutory requirement, and that the commission's workgroup will continue to develop financial responsibility requirements for future adoption. In the meantime, the commission will enforce the requirement of 40 CFR Part 279, adopted by reference, to clean up used oil releases upon detection.

Proposed §324.22 (now renumbered to be §324.21 due to a previous section deletion) contains provisions for suspension or revocation of registrations if necessary. Central & South West Services,City Public Service, Gulf States Utilities, Southwestern Public Service Company, and Texas Utilities either opposed these requirements entirely, questioning the commission's authority to impose registration suspension and revocation requirements, or recommended that they be scaled down. The Texas Legacy Company supported the requirement as proposed. The Texas Health and Safety Code, §371.026 states that the commission shall adopt rules governing registration. The commission feels that this statutory provision provides authority to adopt rule provisions covering both registration and registration suspension and revocation for just cause. The commission would point out that the rule allows a suspension or revocation of registration to be appealed. A registration is suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. The holder of a used oil registration that has been revoked by the commission may reapply for registration as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the commission a second time, the revocation shall be permanent. The commission feels that the registration suspension and revocation rule provisions are within its statutory authority and are fair to the regulated community. Therefore, no changes were made in response to these comments.

Subchapter B, Financial Assurance for Closure, §§324.50-324.54, were derived for the purpose of applying this subchapter to various recycling facilities which must comply with financial assurance requirements. In response to the comments received from City Public Service, Gulf States Utilities, Pennzoil, Southwestern Public Service Company, Texas Utilities, and the Used Oil Grant Program Advisory Committee, the commission has decided to delete the Subchapter B and continue consideration of adoption of Chapter 324, Subchapter B to March 27, 1996 while the staff considers additional options. The commission acknowledges that demonstration of financial responsibility is a statutory requirement and that the commission is continuing the process of developing rules regarding financial responsibility and intends to adopt such rules at a future date.

The new sections are adopted under Texas Water Code, §§5.103, 5.105, and 26.011, which provides the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The new chapter is also adopted under the Solid Waste Disposal Act, §361.017, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024, which allows the commission to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Used Oil Collection, Management and Recycling.

§324.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, except when the context clearly indicates otherwise. Terms defined in 40 CFR §279.1 shall have the same meaning when used in this rule, except as specifically defined in this section.

Aboveground tank–A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

Administrator or Regional Administrator–These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."

Commission–The Texas Natural Resource Conservation Commission (Commission) or its successor.

Environmental Protection Agency (EPA)–This term in 40 CFR Part 279 requirements should be replaced with "commission."

Recycling–

(A) Preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

Re-refining–Applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

Secondary containment–Structures (dikes, berms, and/or retaining walls) or equivalent secondary containment systems that are made of a material(s) that is sufficiently impervious to used oil and capable of containing all potential spills and releases of used oil from the tanks or containers, plus run-on water, until the facility owner or operator can take measures to clean up the released used oil and the run-on water.

Sufficiently impervious to used oil–Capable of containing all potential spills and releases of used oil to soil, surface water, and ground water from containers and tanks until the facility owner or operator can take measures to clean up the released used oil.

Synthetic oils–Oils not derived from crude oil, including those derived from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids which are used as hydraulic fluids and heat transfer fluids, such as those based on phosphate esters, diphenyl oxide or alkylated benzenes. Synthetic oils are generally used for the same purpose as crude oil derived oils, are usually mixed and managed in the same manner, and present relatively the same level of hazard after use.

§324.3. Applicability. Applicability and exemptions from applicability will be as in 40 CFR Part 279, Subpart B, and as clarified herein.

(1) A used oil that has been determined to be listed hazardous must be handled in accordance with hazardous waste rules. EPA Hazardous Waste Number "F002" shall be used on used oil that is listed hazardous due to halogenated contaminants, because the EPA has not provided a Hazardous Waste Number to properly manifest such listed hazardous waste.

(2) The requirement in 40 CFR Part 279 that refers to

compliance with Parts 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in full compliance with 40 CFR Part 264/265, Subpart K. Used oil can be stored in tanks and containers not subject to 40 CFR Part 264 or 265.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10 (b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per 30 TAC §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil, but the resultant mixture cannot exhibit the hazardous characteristic of ignitability if it is to be managed under this chapter and 40 CFR Part 279. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics; the resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil derived products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this chapter (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated under this chapter and 40 CFR Part 279 until it is a spent material as defined in 40 CFR §261.1(c)(1) and 30 TAC §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

§324.5. Notice by Retail Dealer.

(a) A retail dealer who annually sells directly to the public more than 500 gallons of automotive oil annually in containers for use off-premises shall post in a prominent place a sign provided by the commission:

(1) informing the public that improper disposal of used oil is prohibited by law;

(2) informing the public that used oil filters cannot be disposed of in municipal landfills or waste going to municipal landfills;

(3) prominently displaying the toll-free telephone number of the state used oil information center.

(b) Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

§324.6. Generators. Standards for used oil generators shall be as in 40 CFR Part 279, Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may opt to be the generator of the used oil. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator where the used oil is removed will remain the generator.

§324.7. Collection Centers. Standards for do-it-yourselfer used oil collection centers and used oil collection centers shall be as in 40 CFR Part 279, Subpart D and as specified herein. All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers. All collection centers collecting used oil from households will be publicized by the commission.

(1) Do-it yourselfer used oil collection center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission. Registrations will expire on December 31 in even numbered years. Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year. New collection centers shall register within 30 days of initial operation;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall annually report the amount of household used oil collected by January 25 of each year on a form provided by the commission;

(E) is not subject to the rebuttable presumption.

(2) Used Oil Collection Center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center.

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission. Registrations will expire on December 31 in even numbered years. Collection centers that have already registered their used oil activities prior to the effective date of this rule do not need to register again until their registrations have expired on December 1 of an even numbered year. New collection centers shall register within 30 days of initial operation;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall report annually the amount of household and non-household used oil collected by January 25 of each year on

a form provided by the commission. Mixtures of household used oil and non-household used oil shall be considered non-household used oil;

(E) is not subject to the rebuttable presumption on household used oil if it is not mixed with non-household used oil.

§324.11. Transporters and Transfer Facilities. Standards for used oil transporters and transfer facilities shall be as in 40 CFR Part 279, Subpart E and as specified in this section.

(1) Underground storage tanks (USTs). Underground storage tanks that contain used oil are subject to the UST standards in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) in addition to those in 40 CFR Part 279.

(2) Registration. Transporters must register with the EPA one time on their used oil activities and with the commission biennially by January 25 of the year following the end of the biennial year. Transporters must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Transporters must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Annual report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e. generator, transporter, transfer facility, re-refiner, processor, marketer, burner.

§324.12. Processors and Rerefiners. Standards for used oil processors and rerefiners shall be as in 40 CFR Part 279, Subpart F and as specified in this section.

(1) Underground storage tanks. Section 324.11(1) of this title (relating to Transporters and Transfer Facilities) applies.

(2) Registration. Processors and rerefiners must register with the EPA one time on their used oil activities and with the commission biennially by January 25 of the year following the end of the biennial year. Processors and rerefiners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Processors and rerefiners must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan which a facility will follow when performing sampling and analysis, keeping records, and when complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis, procedures and analysis (to assure listed hazardous wastes are not mixed with the used oil received), and procedures for handling a shipment of contaminated used oil. A facility that only processes its own used oil and uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements need not prepare an analysis plan.

(4) Annual report. The processor/rerefiner biennial report information required by 40 CFR §279.57(b) shall be provided to the commission annually by January 25 of the following year. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e. generator, transporter, transfer facility, re-refiner, processor, marketer, burner. The information shall be entered on a commission-prescribed form and forwarded to the commission. Mail the report form to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

§324.13. Burners of Off-specification Used Oil for Energy Recovery. Standards for burners of off-specification used oil for energy recovery shall be as in 40 CFR Part 279, Subpart G and as specified in this section.

(1) Underground storage tanks. Section 324.11(1) of this title (relating to Transporters and Transfer Facilities) applies.

(2) Registration. Burners of off-specification used oil for energy recovery must register with the EPA one time on their used oil activities and with the commission biennially by January 25 of the year following the end of the biennial year. Burners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Burners must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Annual report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, and the date of receipt. A single consolidated report may be submitted for each company summarizing each type of used oil activity, i.e. generator, transporter, transfer facility, re-refiner, processor, marketer, burner.

§324.14. Marketers of Used Oil Fuel. Standards for marketers of used oil which will be burned for energy recovery shall be as in 40 CFR Part 279, Subpart H, and this subchapter. Marketers of used oil which will be burned for energy recovery must register with the EPA one time on their used oil activities and the commission biennially by January 25 of the year following the end of the biennial year. Marketers must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Marketers must register, through the commission, using EPA Form 8700-12 (one time) and a form provided by the commission (biennially). Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

§324.15. Spills. Whenever there is a catastrophic release or discharge of used oil and used oil reaches the environment, corrective measures must be immediately taken by the responsible person to adequately protect human health and the environment from potential damages. A spill of used oil in an amount sufficient to cause a sheen on water or a spill of automotive engine used oil or a mixture of automotive used oil and other used oil of 25 gallons or more that

goes into the environment at a do-it-yourselfer used oil collection center should be reported to the commission as soon as possible and not later than 24 hours after discovery. (See 40 CFR §279.43(c) for discharges during transport.) A spill or overfill of used oil at an underground storage tank that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water shall be reported and handled as in 30 TAC Chapter 334, §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills). All other used oil spills must be reported in accordance with other applicable commission requirements and agreements. The responsible person may notify the commission in any reasonable manner including by telephone, in person, or by any other method approved by the commission.

(1) During normal business hours, the responsible person may notify the regional office for the commission region in which the discharge or spill occurred; or

(2) After normal business hours, the responsible person may call the commission Emergency Response Unit 24-hour number at (512) 239-2507 or the State toll-free Spill Reporting Hotline at (800) 832-8224.

§324.18. Civil Penalty.

(a) Except as provided by subsection (c) of this section, a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to file a report under §324.7 of this title (relating to Collection Centers).

(d) The commission, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

§324.21. Suspension or Revocation of Registration.

(a) The commission may suspend or revoke a registration for:

(1) failure to maintain complete and accurate records;

(2) alteration of any record maintained or received by the registrant, outside of justified and documented corrections;

(3) delivery of used oil to an entity not registered with the commission;

(4) failure to comply with this rule or an order issued by the commission;

(5) failure to submit annual reports as required;

(6) failure to maintain financial assurance as required; or

(7) failure to reasonably perform the used oil activities for which the registration was issued.

(b) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked a facility shall not possess or accept used oil regulated under this rule.

(c) The holder of a used oil registration that has been revoked by the commission may reapply for registration pursuant to this rule as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the commission a second time, the revocation shall be permanent.

(d) Appeal of a suspension or revocation of registration procedures are as follows:

(1) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation of registration has been sent from the executive director to the last known address of the applicant.

(2) An opportunity for a formal hearing may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of registration suspension or revocation has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not possess used oil regulated under this rule.

(3) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992), the Texas Solid Waste Disposal Act, Texas Health, and Safety Code, Chapters 361 and 371 (Vernon 1992), and the rules of the commission.

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 March 13, 1996.

TRD-9603520 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 239-6087

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Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (commission) adopts the repeals of §§330.1141-330.1152, and §§330.1170-330.1174, Subchapter Z (Waste Minimization and Recyclable Materials), concerning do-it-yourself (DIY) changer, used motor vehicle oil recycling and used oil collection center reimbursement. Sections 330.1141-330.1152 and §§330.1170-330.1174 are adopted without changes to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8982) and will not be republished.

The United States Environmental Protection Agency (EPA) has published a new 40 Code of Federal Regulations (CFR) Part 279, Standards for the Management of Used Oil.

This new rule extends the EPA's regulation to all nonhazardous used oil, used oil made characteristically hazardous by use (rather than by mixing), used oil recycled by means other than burning for energy recovery (in addition to used oil burned for energy recovery), and used oil generated by municipal or industrial generators. It also regulates DIY changer used oil (household used oil) after collection.

The repeals are adopted to delete DIY changer and used motor vehicle oil recycling requirements from Chapter 330, Subchapter Z (Waste Minimization and Recyclable Materials) for replacement by a new 40 CFR Part 279 implementing rule in Chapter 324, Used Oil.

The commission has prepared a Takings Impact Assessment for the used oil rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment: The Purpose of the new rule, old rule sections repeal, and rule amendments are to fully implement 40 CFR Part 279, Standards for the Management of Used oil. The new rule, old rule sections repeal, and

rule amendments substantially advance the stated purpose by providing a state rule to implement the federally mandated rule. The rule has no effect on private real property because the rules only apply to used oil management activities that do not affect property values. When new, more stringent Federal requirements are promulgated, such as 40 CFR Part 279, the state must adopt equivalent rule requirements (57 FedReg 41604, September 10, 1992).

A public hearing was held on November 14, 1995 in Austin. No comments were received on this repeal.

The comment period closed December 4, 1995. No written comments were received on this repeal.

Sections 330.1141-330.1152 on DIY changer, used motor vehicle oil recycling are repealed for replacement by 30 TAC Chapter 324, Subchapter A, Used Oil Recycling.

Sections 330.1170-330.1174 on reimbursement of DIY changer, used motor vehicle oil collection centers for disposal of used oil contaminated with hazardous wastes/hazardous substances are repealed for replacement by 30 TAC Chapter 324, Subchapter A, Used Oil Recycling.

Subchapter Z. Waste Minimization and Recyclable Materials

• 30 TAC §§330.1141-330.1152

The repeals are adopted under Texas Water Code, §§5.103, 5.105, and 26. 011, which provide the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

These repeals are also adopted under the Texas Health and Safety Code, Chapter 371, Used Oil Collection, Management and Recycling Act.

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

Issued in Austin, Texas, on March 13, 1996.

TRD-9603522 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 239-6087

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• 30 TAC §§30.1170-330.1174

The repeals are adopted under Texas Water Code, §§5.103, 5.105, and 26. 011, which provide the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

These repeals are also adopted under the Health and Safety Code, Chapter 371, Texas Used Oil Collection, Management and Recycling Act.

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

Issued in Austin, Texas, on March 13, 1996.

TRD-9603523 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 239-6087

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.1, 335.6, Subchapter A; §335.41, Subchapter B; §335. 78, Subchapter C; §335.221, Subchapter H; and §335.504, Subchapter R, concerning used oil management. Sections 335.1, 335.6, 335.78, 335.221 and 335. 504 are adopted with changes to the proposed text as published in the October 27, 1995, issue of the *Texas Register* (20TexReg 8894). Section 335.41 is adopted without changes and will not be republished.

The United States Environmental Protection Agency (EPA) has published a new 40 Code of Federal Regulations (CFR) Part 279, Standards for the Management of Used Oil.

The commission has prepared a Takings Impact Assessment for the used oil rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment: The Purpose of the new rule, old rule sections repeal, and rule amendments are to fully implement 40 CFR Part 279, Standards for the Management of Used oil. The new rule, old rule sections repeal, and rule amendments substantially advance the state purpose by providing a state rule to implement the federally mandated rule. The rule has no effect on private real property because the rules only apply to used oil management activities that do not affect property values. When new, more stringent Federal requirements are promulgated or enacted, such as 40 CFR Part 279, the State must adopt equivalent rule requirements (57 Fed. Reg. 41604, September 10, 1992).

These amendments are adopted to remove appropriate used oil requirements from 30 Texas Administrative Code (TAC) Chapter 335 for placement in a new 30 TAC Chapter 324, Used Oil, which implements 40 CFR Part 279.

A public hearing was held on November 14, 1995, in Austin. No comments were provided at the hearing on the proposed amendments to Chapter 335.

The proposal comment period closed December 4, 1995. Comments were received from the Texas Chemical Council and Texas Utilities Services, Inc.

On the §335.1 definition of "Used Oil", the Chapter 324 cross-reference was corrected from the subchapter to the chapter.

On §335.6(c), (d), and (i)(4) cross references were corrected.

On the new §335.6(j), the wording was corrected to indicate that both notification and regulation of the used oil described would be under Chapter 324 and to indicate that only used oil that is recycled is regulated under Chapter 324.

Section 335.78(j) was corrected to indicate that it only applies to used oil that is going to recycling and to correct the Chapter 324 cross-reference from the subchapter to the chapter.

On §335.221(b)(1), the Chapter 324 cross-reference was corrected from the subchapter to the chapter.

On §335.501, Texas Utilities recommended adding this statement: "After the determination has been made that a product is used oil, the used oil shall be managed per Chapter 324 of this title." Because §335.501 was not proposed to be amended, no change could be made to this section. Texas Utilities subsequently clarified that their concern was that used oil removed from electrical equipment that would be reused not be subject to 30 TAC Chapter 324 used oil requirements. In response to this, a new paragraph was added to 30 TAC §324.3 to clarify that 40 CFR Part 279 and 30 TAC Chapter 324 do not apply to used oil until it is a spent material, i.e., any material that has been used and as a result of contamination can no longer serve the purpose for which it is intended without processing. In regard to §335.504(1), Texas Utilities suggested that 40 Code of Federal Regulations §261.6 be referenced in association with determining if a material is excluded from being a solid waste or hazardous waste. Because §261.6 addresses hazardous wastes that are not regulated as hazardous wastes when recycled, the commission feels this additional reference should not be added to this section of the rules.

With regard to §335.504(2), the Texas Chemical Council suggested removal of the language that was intended to clarify listed hazardous

waste. According to the commenter, the additional language does not provide clarification. The commenter also stated that "In order to be consistent with federal regulatory language, commission should not change the wording." The commission agrees that the language regarding listed hazardous waste is not identical to that found in the 40 Code of Federal Regulations. However, it has been our experience that many individuals are not aware of the fact that if a non-listed waste is mixed with a listed hazardous waste, the resulting mixture is considered a listed hazardous waste, as explained in 40 Code of Federal Regulations §261.3 (Definition of hazardous waste). Therefore, the commission believes it is important to reiterate this in the hazardous waste determination protocol.

In regard to §335.504(3)(B), the Texas Chemical Council suggested that the commission was"narrowing the scope of process knowledge as allowed by the EPA." The commenter went on to provide an example of how the commenter felt the proposed wording might prohibit a generator from using up-stream information in making a hazardous waste determination. The commenter noted that the proposed language was not identical to the language of the 40 Code of Federal Regulations and might be confusing. The commission agrees that the wording found in this section is not identical to that found in the 40 Code of Federal Regulations. However, the commission does not feel that by adding the words "to generate the waste" it is limiting a company's use of process knowledge. The proposed section states that persons can use knowledge of "materials and/or process used to generate the waste" when making a hazardous waste determination. In the example provided by the commenter, the upstream operation is a part of the "process" or history of the waste which came into existence; therefore, upstream information can and should be considered in the hazardous waste determination. The process used "to generate the waste" merely clarifies that the process steps must be part of the overall process that generates the waste and thereby helps avoid possible confusion. Therefore, no change was made in response to this comment.

On §335.504(4), Texas Utilities suggested deletion of this section's provision that used oil which was made hazardous by mixing with hazardous waste is to be regulated as hazardous waste. Instead, the commenter proposed that any material that is determined to be used oil shall be managed under Chapter 324 of this title. This suggestion includes deletion of 40 CFR §261. 3(a)(2)(v) which states that used oil containing more than 1,000 ppm (parts per million) total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261. 40 CFR §279.21(b) makes this presumption that used oil containing more than 1,000 ppm total halogens is listed hazardous applicable to used oil generators. This means that a used oil generator must make a total halogens determination to prove that his used oil does not contain more than 1,000 ppm total halogens or demonstrate that his/her used oil could not have been mixed with a listed hazardous waste by process knowledge. He/she could demonstrate this by documenting that they have no listed hazardous wastes on site or that they have adequate procedural and/or physical controls to prevent listed hazardous waste from being mixed with their used oil. 40 CFR §261.6(a)(4) further states that used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to hazardous waste regulations but is regulated under 40 CFR Part 279. At Least one generator has already misinterpreted this provision as a complete exemption from making a hazardous waste determination on used oil. This exemption from hazardous waste regulation applies to used oil that is characteristically hazardous by use and does not apply to used oil made characteristically or listed hazardous by mixing. It also does not apply to used oil that is not recycled. A change was made to §335.504(4) to make this clearer. The commenter's suggested change would not be in agreement with the federal rules applicable to used oil, and the commission cannot adopt a rule amendment that would be less stringent than the federal rules. Reference in the commission rules to 40 CFR §261.3(a)(2)(v) is required for EPA authorization of the Texas used oil program. Therefore, this commenter's suggested change could not be made.

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

• 30 TAC §335.1, §335.6

The amendments are adopted under Texas Water Code, §§5.103, 5.105, and 26.011, which provides the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. These amendments are also adopted under the Solid Waste Disposal Act, §361.017, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024, which allows the commission to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Texas Used Oil Collection, Management and Recycling Act.

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

Used oil–Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, Conditionally Exempt Small Quantity Generator (CESQG) hazardous used oil, and household used oil after collection that will be recycled are found in 30 TAC Chapter 324 (relating to Used Oil) and 40 CFR Part 279 (relating to Standards for Management of Used Oil.)

§335.6. Notification Requirements.

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

(c) Any person who generates municipal hazardous waste in quantities equal to or greater than 1,000 kilograms in a calendar month or quantities of acute municipal hazardous waste in excess of quantities specified in ™335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in a calendar month, or generates quantities of hazardous industrial solid waste or non-hazardous industrial solid waste equal to or greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Record keeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide written notice to the executive director of any such changes or additional information, to that reported previously. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in sub-section (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 and §335.513 of this title (relating to Waste Classification and Waste Coding Required, and Documentation Required) shall include, but is not limited to:

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

(d) Persons generating more than 100 kilograms but less than 1000 kilograms of hazardous municipal waste in any calendar month shall notify the executive director of such activity on forms provided by the executive director. Such person shall also submit to the executive director upon request such information as may be reasonably required to enable the executive director to determine whether the storage, processing, or disposal of such waste is compliant with the terms of these sections. Notifications submitted pursuant to this section shall be in addition to any information provided on any permit application required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Record Keeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of any such change or of becoming aware of such new information provide written notice to the executive director of any such changes or additional information to that reported previously.

(e)-(h) (No change.)

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 Code of Federal Regulations (CFR) §266. 108 must provide a one-time signed, written notification to the United States Environmental Protection Agency and to the executive director indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 (relating to Used Oil).

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

Issued in Austin, Texas, on March 13, 1996.

TRD-9603524 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 239-6087

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Subchapter B. Hazardous Waste Management General Provisions

• 30 TAC §335.41

The amendment is adopted under Texas Water Code, §5.103, and the Texas Solid Waste Disposal Act, §361.024(a), which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code, the Texas Solid Waste Disposal Act, and other laws of this state.

The amendment is also adopted under the Solid Waste Disposal Act, §361. 017, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024, which allows the commission to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Texas Used Oil Collection, Management and Recycling Act.

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

Issued in Austin, Texas, on March 13, 1996.

TRD-9603525 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 239-6087

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Subchapter C. Standards Applicable to Generators of Hazardous Waste

• 30 TAC §335.78

The amendment is adopted under Texas Water Code, §§5.103, 5.105, and 26. 011, which provides the Texas Natural Resource Conservation Commission (commission) the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The amendment is also adopted under the Solid Waste Disposal Act, §361. 017, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024, which allows the commission to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Used Oil Collection, Management and Recycling.

§335.78. Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators.

(a)-(i) (No change.)

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil) and 40 Code of Federal Regulations Part 279.

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 March 13, 1996.

TRD-9603526 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 239-6087

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Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities–Hazardous Waste Burned for Energy Recovery

• 30 TAC §335.221

The amendment is adopted under Texas Water Code, §§5.103, 5.105, and 26. 011, which provides the Texas Natural Resource Conservation Commission (commission) the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The amendment is also adopted under the Solid Waste Disposal Act, §361. 017, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024,which allows the commission to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Texas Used Oil Collection, Management and Recycling Act.

§335.221. Applicability and Standards.

(a) (No change.)

(b) The following hazardous wastes and facilities are not regulated under §§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 279 and Chapter 324 of this title (relating to Used Oil). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a CESQG or household generator;

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

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

Issued in Austin, Texas, on March 13, 1996.

TRD-9603527 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 239-6087

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Subchapter R. Waste Classification

• 30 TAC §335.504

The amendment is adopted under Texas Water Code, §5.103 and §26.011, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out its power and duty to protect water quality in the state.

The amendment is also adopted under Texas Health and Safety Code, §361.017 and §361.024, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes; and Chapter 371 relating to Texas Used Oil collection, Management and Recycling Act.

§335.504. Hazardous Waste Determination. A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per 40 Code of Federal Regulations §§261.2, 261.3, or 261.4.

(2) If your material is a waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261,Subpart D.

(3) For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then determine whether the waste exhibits any characteristics of a hazardous waste as is identified in 40 CFR Part 261, Subpart C, by either:

(A) Testing the waste according to methods set forth in 40 CFR Part 261, Subpart C, or according to an equivalent method approved by the administrator under 40 CFR §260.21; or

(B) Applying knowledge of the hazardous characteristic of the waste in light of the materials and/or process used to generate the waste, pursuant to §335.511 of this title (relating to Use of Process Knowledge).

(4) For purposes of complying with Chapter 324 of this title (relating to Used Oil), if the waste is a used oil, determine whether used oil is a listed hazardous waste per 40 Code of Federal Regulations §261.3(a)(2)(v). Used oil made hazardous by mixing with listed or characteristically hazardous waste is regulated as hazardous waste under this chapter. Other used oil that is to be recycled is managed per Chapter 324 of this title.

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 March 13, 1996.

TRD-9603528 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: March 6, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Subchapter A. Practice and Procedure

• 34 TAC §1.13

The Comptroller of Public Accounts adopts new §1.13, concerning initiation of an expedited hearing process, without changes to the proposed text as published in the November 24, 1995, issue of the *Texas Register* (20 TexReg 88).

The new section gives a taxpayer the option of choosing an expedited hearing by complying with the requirements of subsection (b). Use of this process will permit the agency to issue a taxpayer a final decision within 105 to 135 days from the date a compliant request for expedited hearing is received.

No comments were received regarding adoption of the new section.

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

The new section implements the Tax Code, §111.009 and §111.105.

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 March 12, 1996.

TRD-9603454 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Effective date: April 2, 1996

Proposal publication date: November 24, 1995

For further information, please call: (512) 463-4028

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Eligibility

• 40 TAC §48.2912, §48.2928

The Texas Department of Human Services (DHS) adopts amendments to §48. 2912 and §48.2928, without changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 838).

The justification for the amendments is to increase the functional eligibility score for home-delivered meals and emergency response services so that the most needy clients are served. The changes are the result of a DHS Board directive to address the funding shortfall in CCAD for fiscal year 1996.

The amendments will function by providing a positive impact on the CCAD funding shortfall while still providing services to the most needy clients.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The amendments implement §§22.001-22.024 of the Human Resources Code.

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 March 12, 1996.

TRD-9603456 Glenn Scott
General Counsel
Texas Department of Human Services

Effective date: April 15, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 438-3765

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Part X. Texas Employment Commission

Chapter 301. Unemployment Insurance

• 40 TAC §301.20

The Texas Employment Commission adopts an amendment to §301.20, concerning claims for unemployment insurance benefits, without changes to the proposed text as published in the December 26, 1995, issue of the *Texas Register* (20 TexReg 11115). The amendment will allow individuals who receive unemployment insurance to have an amount withheld for income tax purposes pursuant to recent state and federal law amendments.

Unemployment insurance benefits have been subject to federal income tax regulations since 1986. In 1994, the United States Congress passed legislation which requires that all states offer unemployed individuals an option to have federal income tax withheld from any unemployment insurance benefits they may receive beginning January 1, 1997. The 74th session of the Texas Legislature passed legislation which amended Chapter 207, Texas Labor Code, by adding a new subchapter F which conforms to the federal legislation and permits unemployed individuals to elect to have the agency withhold federal income tax from any unemployment insurance benefits. This legislation became effective August 28, 1995; however, actual withholding may not begin before January 1, 1997.

The Commission has adopted this rule which specifies that unemployed individuals will be informed at the time they file a new claim that unemployment insurance benefits are taxable, that they can elect to have federal income tax withheld from their benefits, and that they may be required to make estimated tax payments if they choose not to have any Federal income tax withheld. Unemployed individuals will be informed at the same time that they may change their initial withholding election once while filing claims. This information will be incorporated into any written informational materials and oral instructions they are provided. The rule also specifies that any withheld funds will remain in the unemployment insurance trust fund until transferred to the Internal Revenue Service, that the agency shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax, and that any withholding for income tax shall come after all other types of deductions from unemployment insurance benefits that are required by state law, interstate agreements and court orders.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Labor Code, Title 4, Subtitle B, which provides the Texas Employment Commission with the authority to adopt rules necessary to promote the purpose of the Act.

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

Issued in Austin, Texas, on March 12, 1996.

TRD-9603487 J. Ferris Duhon
Legal Counsel
Texas Employment Commission

Effective Date: January 1, 1997

Proposal publication date: December 26, 1995

For further information, please call : (512) 463-2291

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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

Tuesday, April 9, 1996, 9:00 a.m. (Rescheduled from: Monday, April 1, 1996)

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits is reschedule for the above date and time in the following docket: SOAH Docket Number 473-96-0115; PUC Docket Number-application of GTE Southwest, Inc. to revise general exchange tariff to incorporate all Centranet and Integrated Services Digital Network (ISDN) services pursuant to Public Utility Substantive Rule 23.69

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: March 15, 1996, 3:07 p.m.

TRD-9603684

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Texas Department of Agriculture

Friday, March 22, 1996, 9:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Texas Agricultural Finance Authority

AGENDA:

Call meeting to order, discussion and action on: minutes of previous meeting, renewal application of Oakridge Farms for the Loan Guaranty Program, Tommy and Mary Carter Farm and Ranch Finance Program application, Troy Dodd Young Farmer Loan Guarantee Program application, program rules for Farm and Ranch Finance Program, credit policy and procedures for Farm and Ranch Finance Program, Farm and Ranch Finance Program survey, program rules for the Young Farmer Loan Guarantee Program, credit policy and procedures for the Young Farmer Loan Guarantee Program, program rules for Loan Guaranty Program, credit policy and procedures for Loan Guaranty Program; discussion on: Loan Guaranty and Young Farmer portfolio; presentation by selected respondents to the request for proposal for financial advisory for the TAFA Program expansion; discussion and action on: hiring of a financial advisor for the TAFA Program expansion; policy of separation of duties between the board and the staff; public comment period; discussion and action on next meeting date.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: March 14, 1996, 11:26 a.m.

TRD-9603601

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Texas Commission on Alcohol and Drug Abuse

Monday, March 25, 1996, 1:00 p.m.

2000 East Martin Luther King, United Way of Austin Conference Room

Austin

Regional Advisory Consortium (RAC), Region 7

AGENDA:

Call to order; approval of minutes; introduction of new RAC members; report by Region 7 field representative; discussion on RAC manual; presentation by TCADA Funding Department/question and answer; establish committees/work groups; new business; scheduling of next meeting; and adjournment.

Contact: Blas Lopez, P.O. Box 23990, San Antonio, Texas 78223-9988, (210) 619-8039.

Filed: March 15, 1996, 1:11 p.m.

TRD-9603677

Tuesday, March 26, 1996, 9:00 a.m.

710 Brazos, Perry Brooks Building, Eighth Floor Conference Room

Austin

Board of Commissioners

AGENDA:

Call to order; approval of February 27 and 28, 1996 minutes; public comment; progress report on Sunset; report on current funding processes; action on core council services statewide initiative for councils (SIC) funding process for fiscal year 1997; action on services budget increase in fiscal year 1996 funds; action on services budget increase-unallocated funds; internal audit risk assessment plan; chairman's report; discussion of possible committee formation; interim executive director's report; executive session: pursuant to Texas Government Code, §551.074, discussion of specific candidates for executive director, and pursuant to Texas Government Code, §551.071, contemplated litigation-demand letter of Ben Bynum; report and possible action on search for executive director; report and possible action on demand letter of Ben Bynum; and adjourn.

Contact: Sharon F. Logan, 710 Brazos, Austin, Texas 78701, (512) 867-8147.

Filed: March 14, 1996, 2:42 p.m.

TRD-9603610

Tuesday, March 26, 1996, 9:00 a.m.

710 Brazos, Perry Brooks Building, Eighth Floor Conference Room

Austin

Revised Agenda

Board of Commissioners

AGENDA:

Report on core council services statewide initiative for councils (SIC) funding process for fiscal year 1997 (previously posted as an action item)

Contact: Sharon F. Logan, 710 Brazos, Austin, Texas 78701, (512) 867-8147.

Filed: March 15, 1996, 1:11 p.m.

TRD-9603676

Friday, March 29, 1996, 10:00 a.m.

11307 Roszell, Suite 2607, Department of Human Services Administration Building

San Antonio

Regional Advisory Consortium (RAC), Region 8

AGENDA:

Call to order; approval of minutes; introduction of new RAC members; report by Region 8 field representative; discussion on RAC manual; presentation by TCADA Funding Department/question and answer; establish committees/work groups; new business; scheduling of next meeting; and adjournment.

Contact: Blas Lopez, P.O. Box 23990, San Antonio, Texas 78223-9988, (210) 619-8039.

Filed: March 18, 1996, 10:00 a.m.

TRD-9603729

Friday, April 26, 1996, 11:00 a.m.

400 East Gravis, Duval County Courthouse, County Attorney's Library

San Diego

Regional Advisory Consortium (RAC), Region 11

AGENDA:

Call to order; roll call; introduction of visitors; comments by field representatives; reading and approval of minutes; old business; new business; and adjournment.

Contact: Miguel Lopez, 3804 Casa Blanca Road, Laredo, Texas 78041, (210) 718-0297.

Filed: March 14, 1996, 2:42 p.m.

TRD-9603611

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Texas Alcoholic Beverage Commission

Monday, March 25, 1996, 1:30 p.m.

5806 Mesa Drive, Suite 185

Austin

AGENDA:

1:30 p.m.-Call to order.

Convene in open meeting.

Announcement of executive session.

1. Executive session:

a. briefing regarding operations of the general counsel's office.

b. Samson v. Board;

c. Delacueva v. TABC; and

d. Limon v. TABC.

Continue open meeting.

2. Take action, including a vote, if appropriate on topics listed for discussion under executive session.

3. Approval of minutes of February 26, 1996 meeting; discussion, comment, possible vote.

4. Recognition of agency employees with 20 or more years of service.

5. Administrator's report.

6. Amend 16 TAC §33.24 as published 21 TexReg 1341, February 20, 1996; discussion, comment and possible vote. (Conduct Surety Bond)

7. Mango Bottling Company doing business as Tooter Lingo Liqueurs; discussion, comment, possible vote. (Container issue)

8. Public comment.

9. Adjourn

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, (512) 206-3217.

Filed: March 15, 1996, 8:10 a.m.

TRD-9603646

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Texas Commission on the Arts

Tuesday, March 26, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Performing Arts Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:38 p.m.

TRD-9603568

Wednesday, March 27, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Performing Arts Advisory Council

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:38 p.m.

TRD-9603569

Thursday, March 28, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Performing Arts Advisory Council

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:38 p.m.

TRD-9603570

Tuesday, April 2, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Community Arts Advisory Council

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603571

Wednesday, April 3, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Community Arts Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603572

Monday, April 8, 1996, 3:00 p.m.

920 Colorado, Fourth Floor

Austin

Education Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603573

Tuesday, April 9, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Education Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603574

Wednesday, April 10, 1996, 3:00 p.m.

920 Colorado, Fourth Floor

Austin

Presenting Organizations and Touring Artists Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603575

Thursday, April 11, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Presenting Organizations and Touring Artists Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603576

Friday, April 12, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Presenting Organizations and Touring Artists Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:39 p.m.

TRD-9603577

Tuesday, April 16, 1996, 8:00 a.m.

920 Colorado, Fourth Floor

Austin

Visual/Media Arts Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:40 p.m.

TRD-9603578

Wednesday, April 17, 1996, 8:00 a.m.

920 Colorado, First Floor

Austin

Visual/Media Arts Advisory Panel

AGENDA:

I. Introductions

II. Grants deliberations and voting

III. Policy review

Contact: Becky Iles, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, ext. 42328.

Filed: March 13, 1996, 3:40 p.m.

TRD-9603579

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State Auditor's Office

Tuesday, March 19, 1996, 4:00 p.m.

Capitol Extension, Room E1.030

Austin

Legislative Audit Committee

AGENDA:

1. Call to order

2. Receive information relating to the State Auditor's review of the State Treasury's management of TexPool. Invited testimony from the State Auditor, the State Treasurer, and the Attorney General.

3. Consider and take appropriate action on information

4. Any other business

5. Adjourn

Contact: Lawrence F. Alwin, Two Commodore Plaza, 206 East Ninth Street, 19th Floor, Austin, Texas 78701, (512) 479-4900.

Filed: March 13, 1996, 12:07 p.m.

TRD-9603552

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State Board of Barber Examiners

Monday, March 25, 1996, 9:00 a.m.

Ramada Hotel Market Center, 1055 Regal Row

Dallas

Board of Directors

AGENDA:

Opening of meeting; roll call; new business: Discussion and open forum with barber industry personnel regarding the State Board of Barber Examiners' 1997-2001 Strategic Plan. Adjournment.

Contact: B. Michael Rice, 333 Guadalupe, Suite 2-110, Austin, Texas 78701, (512) 305-8475.

Filed: March 14, 1996, 3:23 p.m.

TRD-9603623

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Texas Bond Review Board

Thursday, March 21, 1996, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

AGENDA:

I. Call to order

II. Approval of minutes

III. Consideration of proposed issues

A. Texas Department of Criminal Justice-refinancing of lease purchase of prison facilities

B. Texas Public Finance Authority-General Obligation Refunding Bonds, Series 1996B

C. Veterans Land Board-Land Refunding Bonds, Taxable Series 1996A and 1996B

D. Texas Department of Housing and Community Affairs-Variable

Rate Demand Multi-Family Housing Revenue Refunding Bonds (Dallas-Oxford Development) Series 1996B

IV. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: March 13, 1996, 10:59 a.m.

TRD-9603548

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Children's Trust Fund of Texas Council

Friday, August 19, 1996, 9:00 a.m.

300 West 15th Street, Suite 103, W. P. Clements Building

Austin

AGENDA:

Introduction

Approval of minutes from December 1, 1995 council meeting

Chairperson's report

Executive director's reports

Discuss future plans and tasks

(Working lunch) Video-"Protecting Public Funds: Your Responsibilities Under the Public Funds Investment Act" as required by the Office of the Governor under the Public Funds Investment Act.

Other business

Adjourn

Contact: Sue Marshall, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, (512) 458-1281.

Filed: March 13, 1996, 1:03 p.m.

TRD-9603554

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Texas Cosmetology Commission

Monday, March 25, 1996, 10:00 a.m.

Texas Cosmetology Commission, Hearing Room, 5717 Balcones Drive

Austin

Revised Agenda

Commission Meeting

AGENDA:

Waiver request on Commission Rule 89.11(4) and 89.11(B)-Larry and Camerina Brown

Contact: Catherine Nahay, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: March 15, 1996, 9:34 a.m.

TRD-9603661

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Texas State Board of Examiners of Professional Counselors

Sunday, March 24, 1996, 9:30 a.m.

420 Decker Drive, Room 170

Irving

Finance and Administration Committee

AGENDA:

The committee will discuss and possibly act on: review of board office operations including policies, procedures, and personnel; requests for conference attendance; and finances.

Contact: Kathy Croft, 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: March 14, 1996, 8:38 a.m.

TRD-9603589

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Texas Education Agency

Tuesday, March 26, 1996, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

The Committee of the Whole will hold a work session which will include (1) a discussion of the proposed repeal of 19 TAC Chapter 75, Curriculum, Subchapters A and E-J, and proposed new 19 TAC Chapter 74, Curriculum Requirements; (2) a discussion of the proposed repeal and readoption of 19 TAC Chapter 89, Adaptations for Special Populations; and (3) a discussion of the proposed repeal of 19 TAC Chapter 75, Subchapter K, Extracurricular Activities and proposed new 19 TAC Chapter 76, Extracurricular Activities.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 14, 1996, 8:37 a.m.

TRD-9603587

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State Board for Educator Certification

Friday, March 22, 1996, 6:30 p.m.

1601 Guadalupe

Austin

AGENDA:

Dinner at Bertram's Restaurant-State Board for Educator Certification dinner

Not action items to occur.

Contact: Sheryl Labar, P.O. Box 12428, Austin, Texas 78711, (512) 475-2637.

Filed: March 14, 1996, 4:50 p.m.

TRD-9603637

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State Employee Charitable Campaign

Tuesday, March 18, 1996, 10:00 a.m.

Texas Higher Education Coordinating Board, Chevy Chase Complex, Building Five, Room 139, 7745 Chevy Chase

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Review of local applications for approval

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 14, 1996, 1:27 p.m.

TRD-9603606

Tuesday, April 16, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Campaign update

III. Team organization and training

IV. Executive outreach

V. Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:08 a.m.

TRD-9603638

Tuesday, May 21, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Appointment of agency coordinators

III. Committee updates

IV. Brochure status and State Policy Committee appeals

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:08 a.m.

TRD-9603639

Tuesday, June 18, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Committee status

III. Coordinator letter status

IV. Material order update

V. Publicity from federations and local charities

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:08 a.m.

TRD-9603640

Tuesday, July 16, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Agency coordinator training

III. Committee status

IV. Material status

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:08 a.m.

TRD-9603641

Tuesday, August 20, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Materials distribution

III. Internal agency training

IV. Committee status

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:08 a.m.

TRD-9603642

Tuesday, September 17, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employees Committee

AGENDA:

I. Introductions

II. Combined campaign kick-off

III. Materials distribution

IV. Committee status

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:09 a.m.

TRD-9603643

Tuesday, October 15, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Agency events and internal training

III. Committee status

IV. Mid-campaign update

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:10 a.m.

TRD-9603644

Tuesday, November 19, 1996, 11:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee

AGENDA:

I. Introductions

II. Campaign reporting and wrap-up

III. Awards planning

IV. Thank you letters

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: March 15, 1996, 8:10 a.m.

TRD-9603645

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Texas Ethics Commission

Friday, March 22, 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 February 9, 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 Number 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, and 354; and adjourn.

Contact: Tom Harrison, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-5800.

Filed: March 14, 1996, 2:24 p.m.

TRD-9603609

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Texas Funeral Service Commission

Thursday, March 21, 1996, 11:00 a.m.

8100 Cameron Road, Suite 600, Room 205

Austin

Revised Agenda

Commission Meeting

AGENDA:

Meeting called to order and roll call

Public comment

Agenda items:

1. Reports from committees: Rules, Finance, Personnel, Education, Complaint Review.

2. Executive closed session:

Meet with Assistant Attorneys General to obtain legal advice regarding employment law and personnel matters, pursuant to Texas Government Code, §551.071(2).

Consider the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the executive director, and/or to hear complaints or charges against him, pursuant to Texas Government Code, §551.074.

3. Return to open session for further discussion and possible action involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the executive director, and/or to hear complaints or charges against him, pursuant to Texas Government Code, §551.074.

4. Executive closed session: Consider the appointment, reappointment, employment, and duties of an acting executive director pursuant to Texas Government Code, §551.074.

5. Return to open session for further discussion and possible action involving the appointment, reappointment, employment, and duties of an acting executive director.

6. Discussion and possible adoption of a job description and job duties of the executive director.

7. Finance Review Committee meeting.

Adjourn

Contact: Marc Allen Connelly, 8100 Cameron Road #550, Austin, Texas 78754-3896.

Filed: March 13, 1996, 4:31 p.m.

TRD-9603586

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Texas Department of Health

Monday, March 25, 1996, 9:00 a.m.

Room K-100, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health Public Hearing

AGENDA:

The Texas Board of Health will hold a public hearing to receive comments on proposed rules concerning health maintenance organizations.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: March 14, 1996, 2:53 p.m.

TRD-9603619

Friday, March 26, 1996, 9:30 a.m.

Room S-402, Exchange Building, 8407 Wall Street

Austin

Informal Home and Community Support Services Agency Task Force

AGENDA:

The task force will discuss and possibly act on: draft Home and Community Support Services Agencies licensing rules (25 Texas Administrative Code §115. 26 concerning personal assistance services; §115.3 concerning licensing fees; §115.22 concerning standards for licensed home health services; and §115. 23 concerning standards for licensed and certified home health services); and public comment.

Contact: Becky Beechinor, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647. 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: March 18, 1996, 10:01 a.m.

TRD-9603731

Thursday, March 28, 1996, 9:00 a.m.

2201 Donley Drive, Second Floor Conference Room (2.11)

Austin

Device Distributors and Manufacturers Advisory Committee

AGENDA:

The committee will discuss and possibly act on: committee member and Texas Department of Health (department) staff introductions; Advisory Committee purpose and responsibilities; review of Advisory Committee rules; selection of Advisory Committee terms of service; overview of department device programs; House Bill 2550 background and implementation; department rulemaking process; review of proposed rules for device distributors and manufacturers; and discussion of proposed rules for device distributors and manufacturers.

Contact: Tom Brinck, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. 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: March 14, 1996, 8:38 a.m.

TRD-9603588

Friday, March 29, 1996, 10:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Texas HIV Medication Program Advisory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes from the previous meeting; clinical discussion of 3-TC (lamivudine) and protease inhibitors; staff report (current budget; and cost forecasts); public comments; and prioritize formulary.

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas 78756, (512) 490-2510. 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: March 14, 1996, 2:54 p.m.

TRD-9603620

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Texas Higher Education Coordinating Board

Tuesday, April 2, 1996, 9:20 a.m.

University of North Texas, Administrative Building, Second Floor Board Room

Denton

Campus Planning Committee Meeting

AGENDA:

The University of Texas at Dallas-New Activity Center; The University of Texas at Arlington-Carlisle Hall renovation; The University of North Texas-purchase a lot at 1120 Eagle Drive including a 1,163 square foot residence; purchase a lot at 1919 Eagle Drive including a 1,062 square foot residence; purchase a lot at 1925 Eagle Drive including a 1,409 square foot residence; purchase a lot at 1931 Eagle Drive including a 1,902 square foot residence; purchase a lot at 1501 Maple Street including a 8,230 square foot building; Environmental Education, Science and Technology Building; reapproval of Food Court/Bookstore renovation; and Library Annex renovation.

Contact: Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: March 18, 1996, 9:46 a.m.

TRD-9603720

Tuesday, April 2, 1996, 2:30 p.m.

Midwestern State University, Hardin Administration Building, Room 106

Wichita Falls

Campus Planning Committee Meeting

AGENDA:

Midwestern State University-Clark Student Center renovation and addition; and tour facility.

Contact: Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: March 18, 1996, 9:46 a.m.

TRD-9603721

Wednesday, April 3, 1996, 8:30 a.m.

Texas State Technical College, Administrative Building, Conference Room

Waco

Campus Planning Committee Meeting

AGENDA:

Texas State Technical College-Waco-Fentress Center, Phase II; and New Computer Applications Center; Texas State Technical College-Harlingen-New Science and Technology Building; tour of proposed sites.

Contact: Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: March 18, 1996, 9:46 a.m.

TRD-9603722

Wednesday, April 3, 1996, 1:00 p.m.

Sam Houston State University, Lowman Student Center, Room 304

Huntsville

Campus Planning Committee Meeting

AGENDA:

Texas Agriculture Experiment Station-Natural Resources Informatics Laboratory at Temple; Texas Engineering Experiment Station-New Facility for Good Lab Practices Program; Texas A&M University-reapproval of Eller Building Energy Project; Sam Houston State University-Bowers Stadium Football Field renovations; and tour of facilities.

Contact: Don Brown, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: March 18, 1996, 9:47 a.m.

TRD-9603723

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Texas Department of Housing and Community Affairs

Monday, March 25, 1996, 9:30 a.m.

507 Sabine Street, TDHCA Office, Fourth Floor

Austin

Programs Committee Meeting

AGENDA:

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on following: approval of minutes of January 8, 1996 Programs Committee meeting; final adoption of HOME Program 1996 Rules; Border Housing Initiative Fund Program; HOME Interim Construction Program Award to City of McKinney, state low income housing plan; transfer of delinquent loans from the Department to Texas State Affordable Housing Corporation; executive director's report; executive session-consultation with attorney under §551.071(2) of the Texas Government Code; anticipated litigation (General Counsel to give report on litigation under §551.071 and §551.103, Texas Government Code, litigation exception) action in open session on items discussed in executive session; adjourn.

Contact: L. P. Manley, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3934.

Filed: March 15, 1996, 4:24 p.m.

TRD-9603699

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Texas Department of Insurance

Monday, April 1, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0474.D

In the matter of Thomas K. Lawless and Ronald Morgan doing business as National Processing Center.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 18, 1996, 9:22 a.m.

TRD-9603709

Tuesday, April 2, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1304.c

To consider whether disciplinary action should be taken against Alauddin B. Charania, Houston, Texas, who holds a Local Recording 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: March 18, 1996, 9:22 a.m.

TRD-9603710

Tuesday, April 2, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0370.c

To consider whether disciplinary action should be taken against Lamb County Abstract, Inc. doing business as Rose Abstract and Title Company, Littlefield, Texas, who holds a title 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: March 18, 1996, 9:22 a.m.

TRD-9603711

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Texas State Library and Archives Commission

Monday, April 1, 1996, 3:00 p.m.

Lorenzo de Zavala State Archives and Library Building, Room 314

Austin

AGENDA:

1. Approve minutes for January 26, 1996 commission meeting

2. Approve agreement to loan the gubernatorial records of Governor Ann W. Richards to the University of Texas at Austin

3. Adopt proposed new Standards for Records Center Storage, Commission Rules 13 TAC §§6.51-6.59

4. Hear reports on the Council of State Historical Records Coordinators meeting in Austin, and on the Texas Historical Records Advisory Board's Strategic Plan

5. Hear briefing on Public Funds Investment Act, appoint public funds investment officer

6. Public comment

7. Director's report

Contact: Nancy Webb, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460, email nancy.webb@tsl.state.tx.us

Filed: March 14, 1996, 11:05 a.m.

TRD-9603600

Monday, April 1, 1996, 6:30 p.m.

The Austin Club, 110 East Ninth Street

Austin

AGENDA:

1. Discussion of goals and objectives

Contact: Nancy Webb, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460, email nancy.webb@tsl.state.tx.us

Filed: March 14, 1996, 11:04 a.m.

TRD-9603598

Tuesday, April 2, 1996, 8:30 a.m.

Doubletree Guest Suites, 303 West 15th Street

Austin

AGENDA:

1. Discussion of goals and objectives

Contact: Nancy Webb, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460, email nancy.webb@tsl.state.tx.us

Filed: March 14, 1996, 11:05 a.m.

TRD-9603599

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Texas Department of Licensing and Regulation

Tuesday, March 26, 1996, 9:00 a.m.

920 Colorado, E. O. Thompson Building, First Floor, Room 108

Austin

Education Division, Auctioneering

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against the Respondent, Ezra Abadi, for failure to notify the department of the probated suspension of his South Carolina auctioneer license within 30 days of receipt of the final order advising him of that action, in violation of 16 Texas Administrative Code (TAC) §67.70(e), pursuant to Texas Revised Civil Statutes Annotated, Articles 8700 (the Act) and 9100; the Texas Government Code, Chapter 2001 (APA); and 16 TAC Chapter 67.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: March 15, 1996, 9:33 a.m.

TRD-9603659

Friday, March 29, 1996, 9:00 a.m.

E. O. Thompson Building, 920 Colorado, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

AGENDA:

The commission will hold a regular meeting according to the following outline:

I. Call to order; II. Roll call and certification of quorum; III. Contested cases; IV. Agreed orders; V. Appointment of Property Tax Consultants Advisory Council members and Architectural Barriers Advisory Committee members; VI. Consideration of possible amendment of Boxing Rules (16 TAC Chapter 61) regarding medical qualifications for boxers; VII. Staff reports; VIII. Operating budget; IX. Executive session; X. Open session/public comments; XI. Video on "Protecting Public Funds" from the Governor's Office; XII. Discussion of date, time and location of next commission meeting; XIII. Adjournment.

Contact: Phyllis Wilson, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3173.

Filed: March 15, 1996, 4:24 p.m.

TRD-9603701

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Texas Municipal Retirement System

Saturday, March 30, 1996, 9:30 a.m.

Texas Municipal Retirement System, 1200 North IH-35

Austin

Regular Meeting, Board of Trustees

AGENDA:

To hear and approve minutes of the regular December 9, 1995 meeting; review and approve service retirements, disability retirements; review and approve extended supplemental death benefits coverage; supplemental death benefits payments; consider, review and act on financial statements; consider and act on composition of Advisory Committee on retirement matters and by-laws governing the committee; consider and act on resolution designating positions authorized to effectuate transactions in securities; consider and act on merger of Village Fire Department Pension Plan and Trust and Village Police Department Money Purchase Pension Plan into the System; consider and act on new and amended forms for beneficiary designations and applications for certain benefits; report by actuary; director and staff reports; consider any other business to come before the board; and adjourn.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: March 11, 1996, 11:26 a.m.

TRD-9603602

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Texas Natural Resource Conservation Commission

Thursday, March 21, 1996, 1:30 p.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will meet in a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission. The commission will also discuss issues continued from previous agendas.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 13, 1996, 3:59 p.m.

TRD-9603582

Wednesday, March 27, 1996, 9:30 a.m.

12118 North Interstate 35, Room 201S, Building E

Austin

AGENDA:

The commission will consider approving the following matters on the agenda: monthly enforcement report; hearing request; industrial

waste discharge enforcement; municipal waste discharge enforcement; multi-media enforcement; air quality enforcement; water well drillers enforcements; motions for rehearing, motions for reconsideration; state implementation plan; rules; miscellaneous; executive session; the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 a.m. agenda starts 8:45 a.m. until 9:25 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 15, 1996, 3:25 p.m.

TRD-9603685

Wednesday-Thursday, March 27-28, 1996, 1:00 p.m. and 8:30 a.m., respectively.

3701 Lake Austin Boulevard, Lower Colorado River Authority Board Room, Hancock Building

Austin

AGENDA:

This meeting is a workshop to present briefings and status reports to Texas Natural Resource Conservation Commissioners, Texas Parks and Wildlife Department Commissioners, and Texas Water Development Board members. No public testimony or comment will be accepted except by invitation of TNRCC, TPWD Commissioners or TWBD Board members.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 14, 1996, 12:18 p.m.

TRD-9603604

Monday, April 22, 1996, 1:30 p.m.

William B. Clements Building-Room 410B, 300 West 15th Street

Austin

AGENDA:

Notice of public hearing on assessment of administrative penalties and requiring certain actions of Jerrell Latham, SOAH Docket Number 582-96-0152.

Contact: Susan Prior, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

Filed: March 14, 1996, 3:30 p.m.

TRD-9603626

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Texas Department of Protective and Regulatory Services

Friday, March 22, 1996, 9:30 a.m.

701 West 51st, First Floor, Public Hearing Room

Austin

Texas Board of Protective and Regulatory Services

AGENDA:

1. Call to order. 2. Reading, correction, and approval of the minutes of January 25-26, 1996. 3. Public testimony. 4. Report by the chairman. 5. Report by the executive director. 6. Reports. A. Staff reports. 1. Recognition of Young at Heart. 2. Consideration and approval of fiscal year 1996 internal audit plan. 3. Status report regarding alternative dispute resolution process for foster parent/program disputes and adoption of resolution. 4. Overview and status of employee grievance/dispute resolution working group. 5. Financial update. 6. Update on implementation of CAPS. 7. Functional review summary. 7. Old business. a. Consideration and adoption of proposed rules for contracting with Licensed Residential Child-Care Providers (40 TAC §700.2503 and §700. 2504). b. Consideration and adoption of rules regarding automation, legislative changes concerning Child Protective Services, and relevant policy clarifications. 8. New Business. a. Presentation on proposed legislative changes and updates to definitions in the Adult Protective Services Handbook. 9. Announcements. 10. Adjournment.

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 438-4435.

Filed: March 14, 1996, 3:04 p.m.

TRD-9603621

Friday-Saturday, March 22-23, 1996, 3:00 p.m. and 9:00 a.m., respectively.

701 West 51st, Executive Conference Room and Texas A&M System Office, 814 Lavaca Street

Austin

Texas Board of Protective and Regulatory Services

AGENDA:

1. Call to order. 2. Executive session: duties and related issues of board members and staff. 3. Actions, if any, as a result of executive session. 4. Board work session: agency strategic plan.

NOTE: The board anticipates recessing its work session at some point and reconvening on Saturday at 9:00 a.m. at Texas A&M System Office, 814 Lavaca Street, Austin, Texas.

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 438-4435.

Filed: March 14, 1996, 3:04 p.m.

TRD-9603622

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Railroad Commission of Texas

Tuesday, March 26, 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: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: March 15, 1996, 1:05 p.m.

TRD-9603674

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Texas Rehabilitation Commission

Thursday, March 28, 1996, 9:30 a.m.

4900 North Lamar Boulevard, Brown Heatly Building, Public Hearing Room, First Floor

Austin

Regular Board Meeting of the Board of the Texas Rehabilitation Commission

AGENDA:

Roll call

Introduction of guests

Invocation

Approval of minutes: December 7, 1995 board meeting

Commissioner's comments

Legislative appropriations request 1998-1999

Texas Workforce System*

Executive session:

Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and Management Audit. These subjects will be discussed in executive session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code Annotated, §551).

Adjournment

The board will reconvene at 10:00 a.m., Friday, March 29, 1996, at the Disability Determinations Services, 6101 East Oltorf, Austin, Texas.

*If time permits, this item will be discussed.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4051 or T.D.D. (512) 483-4045. For ADA assistance, call Oleta Grizzle (512) 483-4057.

Filed: March 14, 1996, 2:53 p.m.

TRD-9603617

Friday, March 29, 1996, 10:00 a.m.

Disability Determination Services, 6101 East Oltorf

Austin

Regular Board Meeting of the Board of the Texas Rehabilitation Commission

AGENDA:

Roll call

Welcoming remarks and dedication

Continuation of board agenda from March 28, 1996

Executive session:

Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and Management Audit. These subjects will be discussed in executive session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code Annotated, §551).

Adjournment

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4051 or T.D.D. (512) 483-4045. For ADA assistance, call Oleta Grizzle (512) 483-4057.

Filed: March 14, 1996, 2:53 p.m.

TRD-9603618

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Texas Residential Property Insurance

Friday, March 22, 1996, 9:30 a.m.

333 Guadalupe, Tower I, Room 1264

Austin

Revised Agenda

Executive Committee

AGENDA:

General Meeting

-Consideration of alternative proposal relating to agent commissions in MAP executive committee's recommended plan of operation

-Discussion of the implementation of the Property Protection Program in relation to implementation of the Market Assistance Program

-Discussion of operational procedures of the MAP, including applications, brochures, and processes for computerization

Contact: Lyndon Anderson, 333 Guadalupe Street, Austin, Texas 78711, (512) 322-2235.

Filed: March 14, 1996, 11:26 a.m.

TRD-9603603

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Center for Rural Health Initiatives

Friday, March 22, 1996, 10:00 a.m.

John H. Reagan Building, Public Hearing Room 106, 105 West 15th Street

Austin

Executive Committee

AGENDA:

Center for Rural Health Initiatives Executive Committee will meet to discuss and possibly act on: minutes from October 31, 1996, meeting; executive director's report; approval of rules for Physician Assistant Loan Reimbursement Program; Advisory Committee reports; committee member comments; selection of next meeting date; and adjourn.

Contact: Laura Jordan, P.O. Drawer 1708, Austin, Texas 78767, (512) 479-8891.

Filed: March 13, 1996, 10:59 a.m.

TRD-9603547

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Texas State Soil and Water Conservation Board

Wednesday, March 27, 1996, 8:00 a.m.

Best Western Inn at Scott and White, 2625 South 31st Street, Board Room 3

Temple

AGENDA:

Minutes from January 17, 1996 board meeting; subdivision bound-

ary changes for Lower Sabine Neches Soil and Water Conservation District #446; district director appointments; Senate Bill 503 status report; Section 319 status report; memorandum of agreement with Texas Natural Resource Conservation Commission; special USDA project on North Bosque River; Texas Coastal Management Program, formation of Executive Committee, certification of agency rules; Corpus Christi Bay National Estuary Program; request for waiver of Senate Bill 503 cost-share rules by the Waters Davis SWCD #318; public information/education report; appoint Planning Committee for 1996 annual statewide meeting of Soil and Water Conservation District Directors; future state meeting sites; state board member elections; review revision of basic and supplemental memorandum of understanding with USDA; Conservation Awards Program; Farm Bill update; report on NACD Spring board meeting; quarterly training report; staffing update; reports from agencies and guests; budget versus expenditure report for six-month period ending February 29, 1996; strategic planning status report; summary assessment of agency performance report; public funds investment act training; board member travel report; review agency response to management control audit; next regular state board meeting-May 15, 1996.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250.

Filed: March 15, 1996, 1:45 p.m.

TRD-9603678

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Structural Pest Control Board

Thursday, March 28, 1996, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.110

Austin

Regular Board Meeting

AGENDA:

I. Approval of board minutes of January 31, 1996.

Contact: Benny Mathis, 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: March 14, 1996, 9:27 a.m.

TRD-9603592

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Telecommunications Infrastructure Fund Board

Thursday, March 21, 1996, 7:00 p.m.

303 West 15th Street, The Austin Room

Austin

Revised Agenda

AGENDA:

I. Call to order open meeting/quorum call-Chairman Carolyn Bacon

II. Call to order executive session to discuss employment and evaluation of specific executive director applicants pursuant to Government Code, §551.074.

III. Adjourn executive session

IV. Adjourn open meeting

Contact: Jim Glotfelty or Danner Bethel, P.O. Box 12428, Austin, Texas 78701, (512) 936-8432.

Filed: March 13, 1996, 2:39 p.m.

TRD-9603564

Friday-Saturday, March 22-23, 1996, 1:30 p.m.

Friday-E1.010, State Capitol Extension, Saturday-303 West 15th Street, Fifth Floor Hearing Room

Austin

AGENDA:

1. Call to order open meeting/quorum call-Chairman Carolyn Bacon

2. Invited public testimony

3. Presentation from Kay Karr and Tom Burnett: TEA Task Force on Technology

4. Discuss elements of draft TIF strategic plan and vision statement

5. Discuss draft request for proposal and application

6. Report on temporary office space, furniture, computers, etc.-Jim Oliver

7. Convene executive session: discussion of employment and evaluation of specific executive director applicants pursuant to Government Code, §551.074

8. Adjourn executive session

9. Adjourn

Contact: Jim Glotfelty or Danner Bethel, P.O. Box 12428, Austin, Texas 78701, (512) 936-8432.

Filed: March 13, 1996, 2:39 p.m.

TRD-9603565

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Texas Turnpike Authority

Monday, March 25, 1996, 8:30 a.m.

Doubletree Hotel Lincoln Centre, 5410 LBJ Freeway

Dallas

Board of Directors

AGENDA:

The agenda includes: approval of minutes of Board of Directors meetings of September 13, 1995, December 5, 1995, and December 29, 1995, the Budget and Legislative Committee meetings of September 6, 1995, the 190T Finance Committee meeting of December 14, 1995, the Right-of-Way Acquisition Committee meeting of January 18, 1996 and the Staff/Financial Advisor Selection Committee meeting of January 31, 1996; receive and accept draft report of the traffic and revenue projected for 190T-E; consider resolution(s) honoring past TTA Director(s); Executive session: (a) advice from counsel and TTA personnel about pending or contemplated litigation and/or settlement offers related to the Dallas North Tollway System, including the Dallas North Tollway, the Addison Airport Tunnel, and the President George Bush Turnpike; (b) deliberations concerning purchase, exchange, lease, value, and donation of real property related to the Dallas North Tollway System, including the Dallas North Tollway, the Addison Airport Tunnel, and the President George Bush Turnpike; (c) deliberations concerning appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of various staff persons and positions, and (d) briefing by TTA staff and questioning of TTA staff related to TTA operations; discussion and consideration of retaining a special TTA Legislative Advisory Counsel; consider award of engineering design and service contracts; consider approval of interlocal/interagency agreements; consider acceptance of ROW appraisal/offer/purchase list numbers

65, 66, and 67; consider granting authorization to executive director to negotiate and execute change orders, supplemental agreements, and extra work orders; consider granting authorization to executive director to negotiate and execute interlocal agreements with cities and counties; 183-A Turnpike matters: (a) receive and accept TTA staff report, and (b) consider options and act to direct staff on further studies; consider issuance of an RFQ for underwriting services; consider retaining financial advisor; and public discussions: (a) activity summary of the executive director; (b) receive public comments; and (c) comments of TTA directors.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: March 15, 1996, 9:46 a.m.

TRD-9603662

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University of Houston System

Friday, March 22, 1996, 9:00 a.m.

University of Houston System, 1600 Smith Street, Suite 3400, Conference Room One

Houston

Asset Management Committee Meeting

AGENDA:

To discuss the following

Endowment performance report as of December 31, 1995

Endowment manager performance report by Vaughan, Nelson, Scarborough and McConnell, Inc.

Report of investment performance of pooled non-endowed funds as of December 31, 1995

Report on separately invested funds as of December 31, 1995

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: March 13, 1996, 3:40 p.m.

TRD-9603580

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University of M. D. Anderson Cancer Center

Tuesday, March 19, 1996, 9:00 a.m.

1515 Holcombe Boulevard, Room AW7.707

Houston

Institutional Animal Care and Use Committee

AGENDA:

Review of protocols for animal care and use and modifications thereof

Contact: Anthony Mastromarino, Ph.D., Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: March 13, 1996, 1:46 p.m.

TRD-9603557

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Texas Board of Veterinary Medical Examiners

Tuesday, April 9, 1996, 11:00 a.m.

Room 140, Memorial Student Center, Texas A&M University Campus

College Station

Examination Review Committee

AGENDA:

The committee will meet to review the results of the April, 1996 State Board Examination for licensure. The committee will convene in open session and then go into executive session in accordance with AG Opinions H-484, 1974 and JM 640, 1987.

Contact: Ron Allen, 333 Guadalupe, Suite 2-330, Austin, Texas 78701, (512) 305-7555.

Filed: March 13, 1996, 11:49 a.m.

TRD-9603550

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Texas Water Development Board

Thursday, March 21, 1996, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue

Austin

AGENDA:

The board will consider: minutes; executive, financial and committee reports; resolution honoring Robert McIvor; financial assistance for Edinburg, Prosper, and Sunbelt Fresh Water Supply District; assignment of contract from Webb County to Laredo, request for increase of the amount authorized under the contract and transfer of funds; amendment to the fiscal year 1995-2000 project priority list for the State Water Pollution Control Revolving Fund; waiver of condition relating to the board's commitment to Galveston County MUD #12; contract with Harris County Flood Control District, transfer of funds and reallocation of funds; development of a Small Community Loan Program; contract with Rensselaerville Institute of New York for a funding program targeting community self-help projects.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: March 13, 1996, 1:26 p.m.

TRD-9603556

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Texas Workers' Compensation Insurance Facility

Monday, March 25, 1996, 9:45 a.m.

DoubleTree Guest Suites Hotel, 303 West 15th Street

Austin

Governing Committee Meeting

AGENDA:

Approval of minutes from the January 8, 1996 Governing Committee meeting. Executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of facility transition plans and personnel policies. Final report on 1995 budget and special projects. Report on 1995 investment results. Consideration

and possible action on servicing company request for reimbursement of legal fees and expenses. Progress report from the Facility Transition Subcommittee. Executive director's report.

Contact: Peter E. Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: March 14, 1996, 10:36 a.m.

TRD-9603596

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Regional Meetings

Meetings Filed March 13, 1996

The Coastal Bend Council of Governments Membership/Board will meet at 2910 Leopard Street, Corpus Christi, March 22, 1996, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9603567.

The Concho Valley Council of Governments Private Industry Council met at 5014 Knickerbocker Road, San Angelo, March 20, 1996, at 3:00 p. m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666. TRD-9603583.

The Jack County Appraisal District Board of Directors met at 210 North Church Street, Jacksboro, March 19, 1996, at 7:00 p.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9603585.

The Lavaca County Central Appraisal District Appraisal Review Board met at 113 North Main Street, Hallettsville, March 19, 1996, at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9603584.

The Limestone County Appraisal District Board of Directors met at 200 West State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, March 19, 1996, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9603545.

The North Texas Private Industry Council Nortex Regional Planning Commission will meet at 4309 Jacksboro Highway, Suite 200, Wichita Falls, March 27, 1996, at 12:15 p.m. Information may be obtained from Kelly Couch, 3917 Texas, Vernon, Texas 76384, (817) 322-5281. TRD-9603581.

The Sharon Water Supply Corporation Annual Meeting met at the Winnsboro City Auditorium near Rodeo Arena, Winnsboro, March 18, 1996, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD-9603549.

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Meetings Filed March 14, 1996

The Burke Center Board of Trustees will meet at 4101 South Medford Drive, Lufkin, March 26, 1996, at 1:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9603625.

The Canyon Regional Water Authority Policy and Budget Committee will meet at the Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, March 28, 1996, at 6:30 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass Drive, New Braunfels, Texas 78130-9579, (210) 609-0543. TRD-9603607.

The Comal Appraisal District Board of Directors met at 178 East Mill Street #102, New Braunfels, March 18, 1996, at 5:30 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9603597.

The Dallas Housing Authority Dallas Housing Authority Board of Commissioners met at the Library Bar, Main Level, Melrose Hotel, 3015 Oaklawn, Dallas, March 21, 1996, at 8:00 a.m. Information may be obtained from Mattye G. Jones, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8475. TRD-9603594.

The Education Service Center, Region XI Board of Directors will meet at 3001 North Freeway, Fort Worth, March 26, 1996, at Noon. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9603608.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul, Gonzales, March 21, 1996, at 6:00 p.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879 or Fax: (210) 672-8345. TRD-9603624.

The Guadalupe-Blanco River Authority (Revised Agenda.) Board of Directors met at the Capitol Extension, 1400 Congress Avenue, Room E1.028, Austin, March 20, 1996, at 2:00 p.m. Information may be obtained from W. E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9603595.

The Harris County Appraisal District (Revised Agenda.) Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, March 20, 1996, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9603605.

The Henderson County Appraisal District Appraisal Review Board met at 1751 Enterprise Street, Athens, March 21, 1996, at 9:00 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75761, (903) 675-9296. TRD-9603634.

The Hood County Appraisal District Board of Directors met at 1902 West Pearl Street, District Office, Granbury, March 19, 1996, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9603593.

The North Texas Regional Library System Board of Directors will meet at 1111 Foch Street, Fort Worth, March 28, 1996, at 1:30 p.m. Information may be obtained from Marsha K. Anderson, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9603635.

The Sabine Valley Center Personnel Committee met at 107 Woodbine Place, Administration Building, Judson Road, Longview, March 21, 1996, at 6:00 p.m. Information may be obtained from Inman White or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9603614.

The Sabine Valley Center Care and Treatment Committee met at 107 Woodbine Place, Administration Building, Judson Road, Longview, March 21, 1996, at 6:00 p.m. Information may be obtained from Inman White or LaVerne Moore, P. O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9603615.

The Sabine Valley Center Finance Committee met at 107 Woodbine Place, Administration Building, Judson Road, Longview, March 21, 1996, at 6:30 p.m. Information may be obtained from Inman White or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9603616.

The Sabine Valley Center Board of Trustees met at 107 Woodbine Place, Administration Building, Judson Road, Longview, March 21, 1996, at 7:00 p.m. Information may be obtained from Inman White

or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9603612.

The San Jacinto River Authority Board of Directors met at Highway 105 West/Damsite Road, Conroe, March 21, 1996, at 3:30 p.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9603633.

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Meetings Filed March 15, 1996

The Andrews Center Board of Trustees, Executive Committee met at 100 East Ferguson, Petroleum Club, Tyler, March 19, 1996, at Noon. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 535-7338. TRD-9603668.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, March 19, 1996, at 3:00 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9603681.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, March 21, 1996, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9603671.

The Bell County Tax Appraisal District (Revised Agenda.) Board of Directors met at 411 East Central Avenue, Belton, March 20, 1996, at 7:00 p. m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9603670.

The Bexar Appraisal District Board of Directors will meet at 535 South Main Street, San Antonio, March 25, 1996, at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 782883-0248, (210) 224-8511. TRD-9603702.

The Burnet County Appraisal District (Revised Agenda.) Board of Directors met at 110 Avenue H, Suite 106, Marble Falls, March 21, 1996, at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9603660.

The Dallas Area Rapid Transit Legal Ad Hock met in Conference Room C, 1401 Pacific Avenue, Dallas, March 19, 1996, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9603682.

The Dallas Area Rapid Transit Strategic Plan Task Force met in Conference Room B, 1401 Pacific Avenue, Dallas, March 19, 1996, at 1:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9603696.

The East Texas Council of Governments Private Industry Council met at 3800 Stone Road, Kilgore, March 21, 1996, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8651. TRD-9603656.

The Ellis County Appraisal District Board of Directors met at 400 Ferris Avenue, Waxahachie, March 21, 1996, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9603675.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, March 18, 1996, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9603648.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, March 20, 1996, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9603649.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, March 27, 1996, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9603683.

The Hays County Appraisal District Board of Directors will meet at 21001 North IH-35, Kyle, March 22, 1996, at 10:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9603650.

The Kendall Appraisal District Board of Directors will meet at 121 South Main Street, Boerne, March 25, 1996, at 5:30 p.m. Information may be obtained from Mick Mikulenka or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012 or Fax: (210) 249-3975. TRD-9603647.

The Lampasas County Appraisal District Board of Directors met at 207 West Eighth Street, Lampasas, March 21, 1996, at 5:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9603665.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, March 21, 1996, at 7:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9603666.

The Lampasas County Appraisal District Board of Directors will meet at 109 East Fifth Street, Lampasas, March 23, 1996, at 8:30 a.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9603667.

The Lower Colorado River Authority Board of Directors met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603688.

The Lower Colorado River Authority Emerging Issues Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603689.

The Lower Colorado River Authority Planning and Public Policy Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603690.

The Lower Colorado River Authority Energy Operations Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9: 00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603691.

The Lower Colorado River Authority Land and Water Operations Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603692.

The Lower Colorado River Authority Regional Development Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603693.

The Lower Colorado River Authority Finance and Administration Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603694.

The Lower Colorado River Authority Audit Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, March 20, 1996, and reconvening, if necessary on March 21, 1996, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9603695.

The Lower Rio Grande Valley Tech Prep Associate Degree Consortium Board of Directors met at the Texas State Technical College Conference Center, Corner Loop 499 and Oak Street, Harlingen, March 20, 1996, at Noon. Information may be obtained from Mrs. Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550-3687, (210) 425-0729. TRD-9603680.

The Lubbock Regional MHMR Center Board of Trustees-Program Committee will meet at 1602 Tenth Street-Board Room, Lubbock, March 22, 1996, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9603654.

The Lubbock Regional MHMR Center Board of Trustees will meet at 1602 Tenth Street-Board Room, Lubbock, March 25, 1996, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9603653.

The North Texas Municipal Water District Board of Directors will meet at the Administration Office, 505 East Brown, Wylie, March 28, 1996, at 4: 00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9603679.

The Nueces River Authority Board of Directors met at the Plaza San Antonio Hotel, 555 South Alamo Street, San Antonio, March 21, 1996, at 10: 00 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9603669.

The Surplus Lines Stamping Office of Texas Board of Directors met at Hughes and Luce, 111 Congress Avenue, Suite 900, Austin, March 19, 1996, at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, (512) 346-3274. TRD-9603672.

The Swisher County Appraisal District Board of Directors met at 130 North Armstrong, Tulia, March 20, 1996, at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9603663.

The Tarrant Appraisal District Board of Directors will meet at 2301 Gravel Road, Fort Worth, March 22, 1996, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024. TRD-9603655.

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Meetings Filed March 18, 1996

The Brazos River Authority Water Quality Committee will meet in Room 21 of Tarleton State University Development Center, Corner of Lillian and Vanderbilt Streets, Stephenville, March 25, 1996, at 1:00 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9603715.

The Dallas Central Appraisal District (Revised Agenda.) Appraisal Review Board will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, March 27, 1996, at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9603704.

The Lamb County Appraisal District Appraisal Review Board will meet at 331 LFD Drive, Littlefield, April 2, 1996, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9603717.

The North Texas Regional Library System Board of Directors will meet at 1111 Foch Street, Fort Worth, March 28, 1996, at 1:30 p.m. Information may be obtained from Marsha K. Anderson, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9603730.

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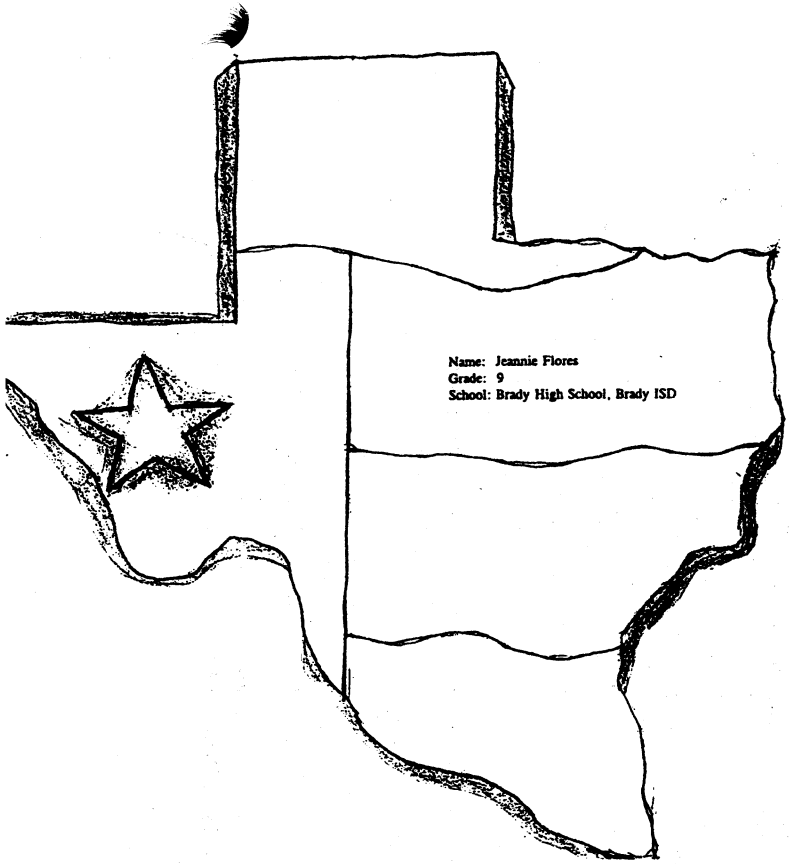
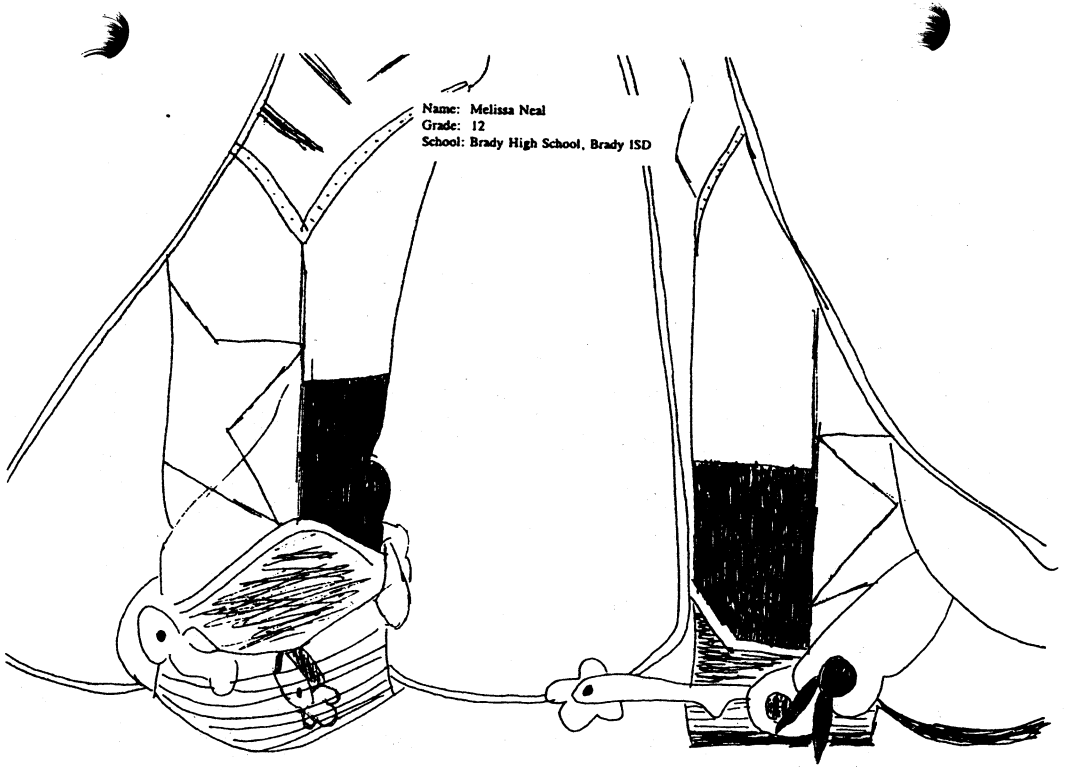
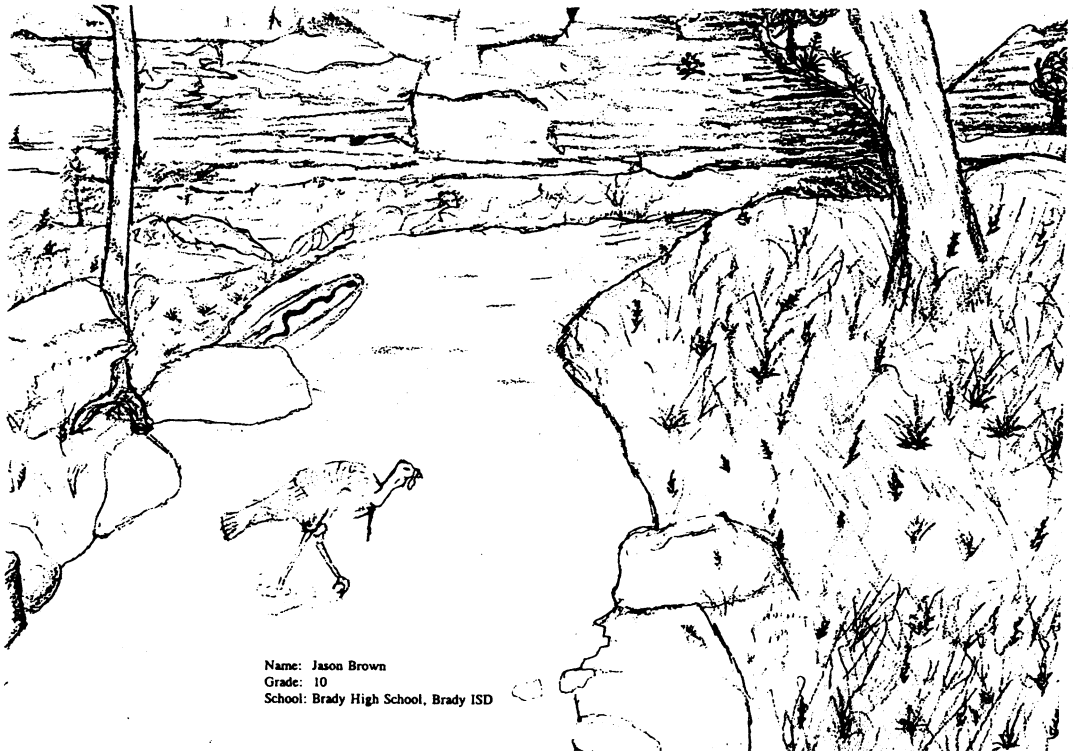


Name: Jeannie Flores
Grade: 9
School: Brady High School, Brady ISD



Name: Melissa Neal
Grade: 12
School: Brady High School, Brady ISD

Name: Eli Anderson
Grade: 9
School: Brady High School, Brady ISD



Name: Jason Brown
Grade: 10
School: Brady High School, Brady 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 Commission for the Blind

Computer Access Technology Training FFY 1996 Request for Proposals

Pat D. Westbrook, Executive Director of the Texas Commission for the Blind, has announced the availability of funds to contract for individualized computer hardware and software program training to consumers receiving services from the Commission and staff of the Commission who are blind or severely visually impaired. These proposals are requested to address unmet needs in specific areas and to provide this service in a more efficient and less costly manner. Additional coverage is sought for: accounting applications Windows applications local providers for adaptive technology training in the Panhandle, El Paso and Valley areas.

OBJECTIVE. The primary objective of the contracts is to enable consumers and staff who are blind or severely visually impaired to have access to work-place, task-specific, advanced training in the use of access hardware and software systems, and to the integration of software programs and hardware systems for employment, education and training applications. Trainers will be individuals familiar with computer technology, applications of the technology for consumers and staff who are blind and visually impaired, and methods of instructing consumers and staff who are blind and visually impaired. They will also have the ability to set software environments and create windows/macros (Form Fill) specific to an individual's needs on the job. Preference will be given to applicants with skills in computer interfacing and training. The following examples are provided as guides to training skills. They are not meant to be inclusive.

Computer interfacing: software customization to access mainframe or personal computer via adaptive software and devices; integration of adaptive software and hardware within a local area network.

Training: advanced skills with computer hardware/software; advanced skills with DOS and Windows 3.11; advanced skills with specific software, e.g., WordPerfect, Lotus 1-2-3, PC-File+ and other off-the-shelf software; advanced skills in accounting software.

Adaptive technology: large print programs, such as Vista, ZoomText, and LPDOS; speech screen review software, such as Vocal-Eyes, Artic, and JAWS; and braille systems, such as Power Braille, ALVA, and Braille 'n Speak.

TARGETED POPULATION. Consumers served under these contracts are persons who are legally blind, totally blind, or severely visually impaired who have met the basic requirements for receiving services and have been referred by an authorized agency representative. Staff served under these contracts are persons referred by a regional supervisor or program supervisor.

WHO IS ELIGIBLE TO APPLY? Organizations and individuals that provide computer technology training to persons who are legally or totally blind are eligible to apply for contracts.

APPLICATION PROCEDURES. ALL APPLICATIONS MUST BE POSTMARKED NO LATER THAN April 2, 1996. Submit to: Glenda Embree, Supervisor of Program Specialists, Texas Commission for the Blind, 4800 North Lamar Boulevard, Suite 220, Austin, Texas 78756, a narrative no longer than five typed pages, which describes: (1) individual or organization applying; (2) proposed geographic coverage; (3) quality and extent of services to be provided (list specific software and adaptive devices for visual loss); (4) experience in providing adaptive technology interface and training to persons with visual loss; (5) cost per person per hour for proposed training and method used to calculate cost; (6) qualifications of key personnel, (7) additional information about you or your organization and past achievements in serving the consumer who is visually impaired or blind; (8) three letters of reference from individuals trained by the applicant (a requirement for both new applicants and existing consultants); (9) a listing of agreements with other state agencies.

INQUIRIES. Interested parties are urged to contact the Texas Commission for the Blind with related questions prior to drafting proposals to facilitate the Request for Proposal process. Inquiries should be directed to MaryAnne Longenecker at (512) 467-6310.

METHOD OF PAYMENT. The service provider must submit a monthly statement containing a detailed listing of provided services and copies of training reports. Upon Commission approval of the submissions, payment shall be by state warrant.

REVIEW CRITERIA.

New applicants: Reviewers will use the following criteria to evaluate proposals from new applicants: (1) The proposal addresses the explicit purpose of the RFP. (2) The applicant addresses expertise with the subject matter. (3) The applicant provides evidence of their professional and organizational capacity to achieve the objectives in a timely manner. (4) The applicant agrees to provide services to the consumer or staff at the trainee's work place. (5) The applicant agrees to attend a one-day orientation in Austin. (6) The applicant agrees to submit reports with required content within 30 days of completion of training. In addition to the written criteria, the applicant will be requested by the Commission to demonstrate their knowledge of products via an assessment of a random sampling

of adaptive and application software from the applicant's proposal.

Existing Consultants: Proposals from existing consultants will be reviewed based on: (1) Review of feedback forms completed by consumers trained by consultants. (2) Review of letters of reference from consumers trained by consultants. (3) Review of quality and timeliness of reports sent to referring counselor and Adaptive Technology Unit within 30 days of training. In addition to review of proposals, existing consultants will be requested by the Commission to demonstrate their expertise on new product areas included in their proposal.

Additional Factors: Review of all proposals will include projected need for service by geographic area and/or training content. Reimbursement will be determined in relation to comparative rates for similar services and other factors.

Issued in Austin, Texas, on March 14, 1996.

TRD-9603636 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: March 14, 1996

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Coastal Coordination Council

Correction of Error

The Coastal Coordination Council adopted amendments to §§501.10-501.14. The rules appeared in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8650).

The rule contained an error as submitted. A portion of text not proposed for deletion was inadvertently not published in the adopted rule.

On page 8653, §501.14(j)(1)(B) read as follows: "Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available."

The corrected version should read: "Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.

(i) The person proposing the activity shall demonstrate that the activity is water-dependent. If the activity is not water-dependent, practicable alternatives are presumed to exist, unless the person clearly demonstrates otherwise.

(ii) The analysis of alternatives shall be conducted in light of the activity's overall purpose.

(iii) Alternatives may include different operation or maintenance techniques or practices or a different location, design, configuration, or size."

Issued in Austin, Texas, on March 18, 1996.

TRD-9603724 Garry Mauro
Chairman
Coastal Coordination Council

Filed: March 18, 1996

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Council on Competitive Government

Notice of Vendor Forums

BACKGROUND: Legislative directives from the Texas Legislature's 74th Regular Session have given the Texas Health and Human Services Commission (HHSC) and the Council on Competitive Government (CCG) the opportunity to explore ways to make government processes more efficient and cost effective. In particular, House Bill 1863 and Senate Bill 1675 direct HHSC to "integrate and streamline" the various health and human service eligibility determination processes. To encourage cost effectiveness, the Legislature directed CCG to analyze the costs and benefits of competitively bidding certain functions of health and human services.

To that end, HHSC and CCG have entered into an agreement with Deloitte & Touche to plan for the integration of health and human service enrollment processes and analyze the costs and benefits of procuring certain functions through a competitive bidding process.

VENDOR FORUMS: In order to facilitate an open process, HHSC and CCG are sponsoring monthly Vendor Forums during the planning phase of this effort. If the planning phase indicates that competitively bidding certain health and human service functions will result in cost savings and efficiencies for the State of Texas, then HHSC and CCG want to make sure that the competitive bidding instrument will reflect a fair request for what the market will be able to provide.

AGENDAS: The Vendor Forums will be oriented to providing the vendor community information about the planning effort. If a competitive instrument (or instruments) is recommended, HHSC and CCG will be seeking input from the vendor community about how to make the instrument as fair, open and realistic as possible.

THIRD VENDOR FORUM: Wednesday, March 27, 1996, from 10:00 a.m.-12:00 noon in Conference Room E2.026 of the Capitol Extension, 1100 Congress Avenue, Austin, Texas.

For further information, please contact Andy Slack, Project Manager, Texas Integrated Enrollment System Planning Project at (512) 501-3226.

Issued in Austin, Texas, on March 15, 1996.

TRD-9603664 David Ross Brown
Assistant General Counsel
Council on Competitive Government

Filed: March 15, 1996

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1. 04).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/18/96-03/24/96	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on March 12, 1996.

TRD-9603566 Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: March 13, 1996

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Texas Education Agency
Correction of Error

The Texas Education Agency (TEA) proposed new §61.2 concerning school district operations. The rule appeared in the February 2, 1996, issue of the *Texas Register* (21 TexReg 732).

On page 732, an error as submitted appeared in proposed new §61.2. In subsection (a)(1), the phrase "...reappoint an existing board member(s)..." should read "...reappoint existing board members..."

The Texas Education Agency (TEA) proposed new §§75.1021-75.1025, concerning career and technology education. The rules appeared in the February 2, 1996, issue of the *Texas Register* (21 TexReg 739).

On page 740, an error as submitted appears in proposed new §75.1023. In subsection (f), the word "students" in the phrase "A students with a disability..." should be singular. On the same page, three errors as published appear in the same section. In subsection (g), the word "student'ss" should read "student's." In subsection (h)(1), the word "stude" should read "student, " and the word "student'ss" should read "student's."

The Texas Education Agency (TEA) proposes new §105.1001, concerning optional extended year programs. The rule appeared in the February 2, 1996, issue of the *Texas Register* (21 TexReg 741).

On page 741, two errors as published appear in proposed new §105.10101. In subsection (b)(2), the word "student's" should read "student," In subsection (c), the word "districts" in the phrase "...the districts at-risk population" should read "district's." On the same page, an error as submitted appears in the same section. In subsection (j), the word "it's" should read "its."

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Texas Ethics Commission
List of Late Filers

Listed are the names of filers from the Texas Ethics Commission who did not file reports, filed late reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Kristin Newkirk at (512) 463-5800 or (800) 325-8506.

Deadline: Monthly PAC Report, due October 5, 1995:

3DI, Inc. PAC, Ronda Piatkowski, 1900 West Loop South, Suite 600, Houston, Texas 77027;

Webb County Deputy Sheriffs PAC, Octavino Rodriguez, P.O. Box 2903, Laredo, Texas 78044; and

El Paso County Democratic Party (CEC), G. Daniel "Danny" Mena, 400 East Overland, El Paso, Texas 79901.

Deadline: Lobby Activities Report, due October 10, 1995:

Tol S. Higginbotham IV, P.O. Box 13052, Austin, Texas 78711; and

Mario A. Martinez, 1300 Guadalupe, Suite 210, Austin, Texas 78701.

Deadline: Monthly PAC Report, due November 6, 1995:

Webb County Deputy Sheriffs PAC, Octavino Rodriguez, P.O. Box 2903, Laredo, Texas 78044;

3DI, Inc. PAC, Rhonda Piatkowski, 1900 West Loop South, Suite 600, Houston, Texas 77027; and

El Paso County Democratic Party (CEC), G. Daniel "Danny" Mena, 400 East Overland, El Paso, Texas 79901.

Deadline: Lobby Activities Report, due November 10, 1995:

Tol S. Higginbotham IV, P.O. Box 13052, Austin, Texas 78711.

Deadline: Monthly PAC Report, due December 5, 1995:

Webb County Deputy Sheriffs PAC, Octavino Rodriguez, P.O. Box 2903, Laredo, Texas 78044;

3DI, Inc. PAC, Rhonda Piatkowski, 1900 West Loop South, Suite 600, Houston, Texas 77027;

El Paso County Democratic Party (CEC), G. Daniel "Daniel" Mena, 400 East Overland, El Paso, Texas 79901; and

Lockwood, Andrews and Newman, Inc. PAC, Priscilla A. Jannasch, 1500 City West Boulevard, Houston, Texas 77042.

Issued in Austin, Texas, on March 13, 1996.

TRD-9603553 Tom Harrison
Executive Director
Texas Ethics Commission

Filed: March 13, 1996

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Statewide Health Coordinating Council

Correction of Error

The Statewide Health Coordinating Council submitted an Open Meeting Notice, which appeared in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1298).

The meeting date was published as "Thursday, February 28, 1996, 2:30 p.m." it should read "Thursday, February 29, 1996, 2:30 p.m.".

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Texas Department of Health

Extension of Comment Period/Public Hearing

The Texas Department of Health (department) published proposed amendments to 25 Texas Administrative Code §§229.341-229.343, 229.345-229.352, and 229.354-229.357 relating to tanning facility licensure standards in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1030). The department is extending the comment period through April 1, 1996.

The department will be holding a public hearing on Friday, March 29 to receive comments on the proposed amendments. The hearing will be held beginning at 9:00 a.m. at the Texas Department of Health Annex, 2115 Kramer Lane, Austin, Texas.

Comments on the proposed amendments should be submitted to Thomas E. Brinck, Drugs and Medical Devices Division, Bureau of Food and Drug Safety, Texas Department of health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237.

Issued in Austin, Texas, on March 18, 1996.

TRD-9603736 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: March 18, 1996

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Request for Proposal

Purpose. The Texas Department of Health (department), Bureau of Purchased Health Services, in accordance with the provisions of Government Code, Chapter 2254, is issuing this request for proposals (RFP) to contract with a qualified and experienced firm for assistance with the development of specific strategies relating to contracting for certain administrative functions performed for the Texas Medicaid program.

Description. The department is seeking a qualified consultant with the capacity to assist the department with the development of specific strategies relating to contracting for certain administrative functions performed for the Texas Medicaid Program, to develop detailed statistical work and to assist with the implementation of Medicaid Managed Care in Texas.

Eligible Applicants. Applicants must have experience in and knowledge of federal, Texas and other states' health and human services' practices and regulations relating to Medicaid, Medicaid Managed Care and §1915(b) and §1115 waivers of the Social Security Act. Applicants should also be familiar with the federal Medicaid program statutes; regulations; waiver application process, waiver issues, and the waiver process; status and issues of other states, as well as general managed care, and particularly Medicaid Managed care, literature and issues, including the managed care markets and market analysis both nationally and in Texas. The applicants must also have knowledge of and/or experience with the current Medicaid Management Information System (MMIS) operated in Texas and with defining, specifying and developing all of the requirements related to the acquisition, construction, operation and maintenance of a management information system with at least the same size and complexities as the current MMIS.

Limitations. The department reserves the right to reject any and all offers received in response to the RFP and to cancel the RFP if it is deemed in the best interest of the department.

Contact. Information concerning the RFP may be obtained from Larry Fisher, Program Specialist, Texas Department of Health, Mail Code Y-921, 1100 West 49th Street, Austin, Texas 78756-3199. (512) 794-6894, Fax (512) 338-6945.

Deadlines. All communications concerning this RFP must be addressed in writing to Stephen R. Svadlenak, Bureau Chief, Purchased Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The physical address for overnight and personal deliveries, also referred to in this notice as the "issuing office", is: Stephen R. Svadlenak, Bureau Chief, Purchased Health Services, Texas Department of Health, 11044 Research Boulevard, Building D, Room 400, Austin, Texas 78759. Each potential applicant is required to submit a non-binding Letter of Intent To Propose (Letter of Intent), which must be received in the issuing office no later than 4:00 p.m. on April 8, 1996. The Letter of Intent must state that the applicant is considering submitting a proposal. Only the proposals of those applicants who submit Letters of Intent will be considered. Letters of Intent which are not received timely at the issuing office will not be considered. The Letter of Intent must identify the entity that may submit a proposal in response to this RFP, and must be signed by an official of that entity. Responses to questions and other information pertaining to this procurement will be sent only to those potential applicants who submit a Letter of Intent. Potential applicants must include their fax number in the Letter of Intent to provide for the expedited transmission of information pertaining to this procurement. The Letter of Intent must be addressed to Stephen R. Svadlenak, at the address previously listed. Prospective applicants are encouraged to fax Letters of Intent to (512) 338-6945 to ensure timely receipt.

By submitting a signed proposal, an applicant agrees that it fully understands the RFP and will abide by the terms and conditions contained in the RFP. No exceptions, amendments, or deviations will be allowed in any response unless agreed to in writing and prior to the date that responses are due. Unauthorized exceptions, amendments, or deviations in a response may result in disqualification of the proposal. To be considered, proposals must be received in the issuing office no later than 4:00 p.m. on April 24, 1996. Faxes will not be accepted.

An applicant conference for prospective applicants will be held on April 2, 1996, from 1:00 p.m. to 4:00 p.m. The meeting will be held in the Texas Department of Health's Bureau of Purchased Health Services' conference room D-

404, which is located on the Fourth Floor of Building D in the Stratum Complex, 11044 Research Boulevard, Austin, Texas. No reservations are necessary. Due to limited space, the department requests that each organization send no more than two representatives.

Evaluation and Selection. Applications will be reviewed by an evaluation committee. The evaluation of the application will be based upon areas of consideration listed in the RFP.

Issued in Austin, Texas, on March 15, 1996.

TRD-9603697 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: March 15, 1996

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Health and Human Services Commission

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 96-02, Amendment Number 503.

The amendment clarifies that orthodontia plans of treatment for EPSDT recipients must be pre-paid in order for the treatment to be continued for persons who lost Medicaid eligibility. The amendment was effective January 1, 1996.

If additional information is needed, please contact Genie Dekneef, Texas Department of Health, at (512) 338-6905.

Issued in Austin, Texas on March 15, 1996.

TRD-9603652 Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission

Filed: March 15, 1996

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 96-01, Amendment Number 502.

The amendment restores the previous reimbursement methodology for drug dispensing fees that was in effect prior to State Plan Amendment Number TN95-20. The amendment was effective January 1, 1996.

If additional information is needed, please contact Pat Gladden, Texas Department of Health, at (512) 219-5001.

Issued in Austin, Texas on March 15, 1996.

TRD-9603651 Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission

Filed: March 15, 1996

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Texas Department of Housing and Community Affairs

Request for Proposals-Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program

I. Summary.

The Texas Department of Housing and Community Affairs (Department) is issuing this Request for Proposals (RFP) to announce the availability of Low Income Home Energy Assistance Program funds for the Comprehensive Energy Assistance Program. These funds are provided to assist low income households residing in Lubbock County in meeting their home energy costs. As of the date of this RFP, Department intends to make approximately $189,613 available to eligible applicants, as defined in this RFP.

II. Eligible Activities.

1. Payment to vendors and suppliers of fuel/utilities, goods, and other services for past due or current bills related to the procurement of energy for heating and cooling needs of the residence, and to heat water.

2. Assistance to some households in developing goals for energy self-sufficiency through case management. This may involve coordination of resources, referrals to other programs, and client involvement in developing a client service agreement.

3. Utility assistance to low-income elderly and disabled most vulnerable to the high cost of energy for heating and cooling needs.

4. Replacement/retrofit/repair of household heating and cooling systems if needed. All replacement units must comply with minimum standard for energy efficiency.

5. Assistance with an energy crisis.

III. Eligible Applicants.

1. Any local public or private nonprofit agency.

2. Special consideration to an entity which was receiving Federal funds under any low-income program or weatherization program under the Economic Opportunity Act of 1964 or any other provisions of law on day before the enactment of this Act.

IV. Application Process. Those eligible applicants interested in applying for the Comprehensive Energy Assistance Program, Low Income Home Energy Assistance Program Fund must submit a proposal to Department, and include the following information: (i) legal name, address, and phone number; (ii) contact name(s); (iii) federal employer identification number; (iv) State of Texas charter number, if applicable; (v) program description, including but not limited to: identification of participating energy vendors and coordinating agencies, budget estimates; and an explanation of ways in which this program will reduce energy costs for the low income households, (vi) experience/qualifications; (vii) whether the party has received any Federal or State findings that are unresolved; and (viii) whether the party is delinquent on any Federal and/or State debt. All information provided will then be reviewed by Department Staff. The staff recommendation will then be forwarded to the Executive Director for final approval.

Submissions of proposals, questions or requests for additional information may be directed to J. Al Almaguer

Energy Assistance Program Manager, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3866.

The Application Package will be available on the date of publication of this RFP. The proposals must be submitted to TDHCA by May 3, 1996. Applications received after the due date will not be considered.

To obtain a copy of the Application Package, write to:

Texas Department of Housing and Community Affairs, Energy Assistance Section, Attention: June Kavanaugh, P.O. Box 13941, Capitol Station, Austin, Texas 78711-3941 or call the Energy Assistance Section at (512) 475-3863.

V. Supplemental Information

A. Definitions: The following words and terms, when used in this document, shall have the following meanings, unless the context clearly indicates otherwise.

Home Energy-Energy used to heat or cool residential dwellings, and to heat water.

Household-Any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

Case Management-Activity of developing, implementing, and monitoring a service plan to meet the needs of a client household. It involves conceptualizing the client household in its (social) environment(s); identifying, providing and/or referring to other social services, legal services, health services, etc.; involving the client in the solution to the problem and coordinating and monitoring progress made toward resolution of the problem(s); representing or advocating on behalf of the client with other service providers to assure that needed services are given.

Low-Income-Whose annual incomes do not exceed 125% of the current Poverty

Households-Income Guidelines as issued by the Secretary of Planning and Evaluation, U.S. Department of Health and Human Services, with adjustments for family size.

Recipient-An entity that has executed an agreement with the Department to administer the CEAP Program.

Energy Education-The process whereby individuals and households learn the choices to use energy efficiently, improve their indoor comfort, and become aware of how their behavior affects energy consumption, energy cost, and health and safety within their homes.

Energy Burden-Expenditures of the household for energy divided by the income of the household.

B. Program Design: This program is designed to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of households income for home energy, primarily in meeting their immediate home energy needs. The desired results of CEAP are to reduce low-income households energy vulnerability and to promote energy self-sufficiency. The results are to be achieved through assistance with energy payments, energy vendors, and providing energy education, case management services and budget counseling.

Applicant must describe how the following assurances will be achieved:

(1) Conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or persons with disabilities individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(2) Coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program),under the supplemental security income program, under part A of title IV of the Social Security Act, under low-income Weatherization Assistance Program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(3) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size.

(4) establish procedures to-

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individual receiving financial assistance for home energy costs;

(5) Applicant must describe how their program will:

Target energy assistance to individuals who are most in need.

Provide energy budget/cost management services to help households to better manage their residential energy bill payments.

Provide energy demand/consumption management services, to help low income households reduce their residential energy needs and costs.

Arrange for arrearage reduction, reasonable or reduced payment schedules, or cost reductions through negotiation with energy vendors or other entities

Provide services to reduce energy demand, consumption, and costs through such activities as making energy-related residential repairs and/or efficiency improvements, in coordination with weatherization contractors and in coordination with energy vendors as appropriate.

Provide energy conservation education services.

VI. Terms and Conditions: This RFP is subject to the following specific conditions, terms, and limitations:

(1) Neither Department nor any party involved in the issuance of this RFP shall pay for any costs or losses incurred by a respondent at any time, including the cost of responding to this RFP.

(2) Department reserves the unqualified right to modify or suspend any and all aspects of the qualification and selection process, including, but not limited to, this RFP, and all or any portion of the applicant qualification and selection process in or subsequent to the RFP; to obtain further information from any prospective applicant; to waive any defects as to form or content or reject any or all responses submitted.

(3) Submission of a response to this RFP shall not create any rights on the part of the respondent or any obligation or liability to respondent on the part of the issuers of the RFP.

(4) There shall be no rights on the part of the respondent in connection with this RFP, and there shall be no obligation or liability to the respondent on the part of any of the issuers of this RFP, their directors, officers, shareholders, employees, subsidiaries, units of government, assigns, designees, consultants or agents in connection with this RFP.

(5) This RFP and any other information provided by or through Department are provided for reference purposes only and neither Department nor any other entity connected with this RFP make any representations as the their accuracy or can be held liable for inaccuracies.

Issued in Austin, Texas, on March 14, 1996.

TRD-9603590 Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs

Filed: March 14, 1996

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for The Kansas Bankers Surety Company, a foreign fire and casualty company. The home office is in Topeka, Kansas.

Application for a name reservation in Texas for HealthPlan of Texas, Inc., a domestic health maintenance organization. The home office is in Tyler, Texas.

Application for a name reservation in Texas for Vista Health Plan, Inc., a domestic health maintenance organization. The home office is in Austin, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on March 18, 1996.

TRD-9603740 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: March 18, 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 admission to Texas of Richards Hogg, Inc. (doing business under the assumed name of Richards Hogg Services), a foreign third party administrator. The home office is New York, New York.

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 March 18, 1996.

TRD-9603741 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: March 18, 1996

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Texas Commission on Judicial Efficiency

Notice of Public Hearings

The Texas Supreme Court, by Order of Chief Justice Thomas R. Phillips, directed the Judicial Selection Task Force to "investigate and report on what method for selecting and retaining judicial officers would best serve the people of Texas, with possible emphasis on reducing the influence of partisan politics, decreasing the importance of campaign contributions, shortening the judicial campaign season, and enhancing diversity and quality among those who serve on the bench."

Public hearings are being held around the state to receive public input on this subject.

1. Texas Commission on Judicial Efficiency Judicial Selection Task Force Tom Luce, Chair, Houston Public Hearing, March 28, 1996, 1:30 p.m., South Texas College of Law, Joe Green Auditorium, 1303 San Jacinto

Houston Area Commissioners: Senator Rodney Ellis, Representative Senfronia Thompson.

Houston Area Task Force members: Senator Mario Gallegos, Senator Jerry Patterson, Roland Garcia, Lee Godfrey, Judge John Hill, District Judge Dwight Jefferson, Hugh Rice Kelly, Ronald Krist, Pat Oxford, Frumencio Reyes, Carroll Robinson, Richard Trabulsi, District Judge Sharolyn Wood, Paul Yetter.

2. Texas Commission on Judicial Efficiency Judicial Selection Task Force Tom Luce, Chair, Corpus Christi Public Hearing, March 29, 1996, 1:30 p.m., City Council

Chamber, 1201 Leopard.

Corpus Christi Area Task Force member: Representative Hugo Berlanga

3. Texas Commission on Judicial Efficiency Judicial Selection Task Force Tom Luce, Chair, Brownsville Public Hearing, April 26, 1996, 1:30 p.m., Commissioners Courtroom, Cameron County Courthouse, Administration Building, Fourth Floor, 964 East Harrison.

Brownsville Area Commissioner: Municipal Court Judge Horacio Pena

Brownsville Area Task Force members: Representative Rene Oliveira, County Court Judge Leticia Hinojosa.

Issued in Austin, Texas, on March 13, 1996.

TRD-9603551 Anthony Haley
Executive Director/General Counsel
Texas Commission on Judicial Efficiency

Filed: March 13, 1996

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Texas Lottery Commission

Request for Proposals

The purpose of this Request for Proposals ("RFP") is to obtain proposals for a comprehensive study and evaluation of all aspects of the Texas Lottery's security systems and procedures. This will include a study and evaluation of the security systems and procedures of the Texas Lottery Operator, GTECH Corporation and the Texas Lottery's instant ticket manufacturer, Dittler Brothers, Inc. The goal of these services is to insure the security and integrity of the operation of the Texas Lottery.

Proposers responding to this RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

Schedule of Events:

The time schedule for awarding a contract under this RFP is shown as follows. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all potential Proposers will be notified.

RFP Issued-March 14, 1996.

Letter of Intent to Propose Due-March 28, 1996 (4:00 p.m., CT).

(Late letters of Intent will not be considered).

Written Questions Due-April 11, 1996 (4:00 p.m. CT).

Answers To Questions Issued-April 18, 1996.

Proposal Due Date-April 25, 1996 (4:00 p.m., CT).

(Late Proposals will not be considered.)

Announcement of Apparent Successful Proposer-May 10, 1996.

Security Audit Commences-May 20, 1996.

To obtain a copy of the RFP, please contact: Ridgely C. Bennett, Commission Attorney, Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630, (512) 371-4935 or by Fax (512) 371-4989.

Issued in Austin, Texas, on March 18, 1996.

TRD-9603732 Ridgely C. Bennett
Commission Attorney
Texas Lottery Commission

Filed: March 18, 1996

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted an amendment to §115.10. The rule appeared in the February 27, 1996, issue of the *Texas Register* (21 TexReg 1548).

In §115.10, first column, third paragraph, should read: "Adopted without changes are §§115.112, 115.116, and 115.117; §115.12 and §115.122; §115.123 and §115.129; §115.212; §§115.412, 115.413, 115.416, 115.417, and 115.419; §115.422, and ..."

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Notice of Applications for Waste Disposal Permits

Notices of applications for waste disposal permits issued during the period of March 8-15, 1996.

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 newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state: (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing;" (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) 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 newspaper 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, Chief Clerks Office-MC105, 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.

ACME BRICK COMPANY, P.O. Box 1189, Denton, Texas 76202; the applicant operates the Highsmith Clay

Mine; the plant site is on the north side of Interstate 10, approximately 4.2 miles west of the intersection of Interstate 10 and Highway 80, approximately 5.5 miles S.W. of the City of Luling, Guadalupe County, Texas; new; 03887.

CITY OF ANNA, 120 West Fourth Street, Anna, Texas 75003; the wastewater treatment plant is approximately 1 mile south and 0.9 miles west of the intersection of Farm-to-Market Road 455 and State Highway 5 in Collin County, Texas; amendment; 11283-01.

CITY OF DUBLIN, 213 East Blackjack Street, Dublin, Texas 76446; the wastewater treatment plant is approximately 3/4 mile southwest of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 1702 and approximately one mile southeast of the City of Dublin in Erath County, Texas; amendment; 10405-01.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 1, c/o Smith, Murdaugh, Little and Bonham, 1100 Louisiana, Suite 400, Houston, Texas 77002; the Londonderry Wastewater Treatment Facilities are approximately 2,000 feet east of Kuykendahl Road, 4,000 feet south southeast of the intersection of Hufsmith Road and Kuykendahl Road in Harris County, Texas; amendment; 11630-01.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 50, 1122 Cedar Lane, El Lago, Texas 77586-6004; the wastewater treatment facilities are at 1122 Cedar Lane, northeast of the intersection of Cedar Lane and Hickory Ridge Drive, one mile northwest of the intersection of State Highway 146 (Bayport Boulevard) and State Highway-NASA 1 (NASA Boulevard) in Harris County, Texas; renewal; 10243-01.

KLEBERG COUNTY, P.O. Box 752, Kingsville, Texas 78364; the wastewater treatment facilities are in the southwest corner of the Town of Ricardo approximately 0.1 mile west of U.S. Highway 77 and approximately 0.34 mile south of Farm-to-Market Road 1118 in Kleberg County, Texas; new; 13374-03.

CITY OF MOUNT VERNON, P.O. Box 597, Mount Vernon, Texas 75487-0597; the potable water treatment facilities are between State Highways 37 and 115, approximately 0.5 mile south of Interstate Highway 30 and below the Mount Vernon Municipal Reservoir Dam in Franklin County, Texas; renewal; 11122-01.

ROSEBUD-LOTT INDEPENDENT SCHOOL DISTRICT, P.O. Box 638, Rosebud, Texas 76570-0638; the wastewater treatment facilities and the disposal site are approximately 1500 feet northwest of the intersection of U.S. Highway 77 and Farm-to-Market Road 431, north of Travis in Falls County, Texas; renewal; 11230-01.

BOB SMITH, 2303 South Main Street, Stafford, Texas 77477; the wastewater treatment facilities are at 9401 Windfern Road, approximately 300 feet south of Zaka Road and approximately 3 miles north from the intersection of Windfern Road and U.S. Highway 290 in Harris County, Texas; renewal; 13509-01.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Coffield Unit, P.O. Box 99, Huntsville, Texas 77342-0099; a swine, poultry and dog operations; the operation is at the southwest end of Farm-to-Market Road 2054 approximately 3. 5 miles southwest of its intersection with Farm-to-Market Road 321 in Tennessee Colony in Anderson County, Texas; amendment; 01807.

WINTER GARDEN PARK CORPORATION, 9101 Business 83, Box 410, Harlingen, Texas 78552; the wastewater treatment facilities are 850 feet due west from the intersection of U.S. Highway 83 and Farm-to-Market Road 800, 85 feet south of U.S. Highway 83 in Cameron County, Texas; renewal; 11628-01.

MERICHEM COMPANY, 4800 Texas Commerce Tower, Houston, Texas 77002-3068; to renew and to amend underground injection control Permit Number WDW-147 which authorizes subsurface disposal of hazardous and non-hazardous wastes generated on-site and from refinery and petrochemical facilities on a commercial basis; the facility is located at 1914 Haden Road, approximately four miles northeast of the City of Pasadena, Harris County, Texas; renewal and amendment; WDW-147; 45-day notice.

PHILLIPS 66 COMPANY, Sweeny Refinery and Petrochemical Complex, P.O. Box 866, Sweeny, Texas 77480; for an amendment to Compliance Plan Number CP-50186 which authorizes operation of a ground-water compliance monitoring and corrective action system. The amendments will incorporate new compliance monitoring program requirements for the East Landfarm and the West Landfarm and will add intrinsic bioremediation as an alternate corrective action option in the Number 2 South Contaminated Water Pond. The wastes managed at this facility are industrial hazardous wastes from petroleum and chemical manufacturing operations; the industrial solid waste management facilities are located at the Sweeny Refinery and Petrochemical Complex and adjacent facilities in Brazoria and Matagorda Counties, Texas. The main plant is located in Brazoria County at the junction of State Highway 35 and FM 524, approximately 3.5 miles northwest of the City of Sweeny; amendment; CP-50186; 45-day notice.

CITY OF JACKSONVILLE, The wastewater treatment facilities are on Canada Street, southeast of the crossing of Ragsdale Creek by Canada Street, southeast of the City of Jacksonville in Cherokee County, Texas, amendment, 10693-01.

Issued in Austin, Texas, on March 15, 1996.

TRD-9603687 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: March 15, 1996

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Notice of Consultant Contract Award

In accordance with the Government Code, Chapter 2254, the Texas Natural Resource Conservation Commission published this notice of consultant contract award. The consultant proposal request was published in the January 16, 1996, issue of the *Texas Register* (21 TexReg 457). The contract effort consists of analyzing fecal coliform, bacteria, and other related water quality parameters and flow data for technical reports. The contractor shall perform nonparametric statistical analysis of water quality data for the Rio Grande Basin and provide the interpretation of analysis for input into various technical reports and the 1996 Regional Assessment for the Clean Rivers Program. The scope of work also includes the development of a technique to analyze water quality data in the Statistica program.

The contractor selected to perform this service is Martin J. Munroe, 2845B San Gabriel, Austin, Texas, 78705. The total value of the contract is $10,000. The contract began

March 5, 1996, and will terminate August 31, 1996. The consultant is required under the contract to present to the agency documents, films, recordings, or reports due as follows:

Task 1: Development of the LOWESS into Statistica Due Date: March 15, 1996

Task 2: Input into the Technical Report of Analysis of Fecal coliform data in the Rio Grande Basin Due Date: March 15, 1996

Task 3: Input into the Technical Report for the Middle Rio Grande Basin Monitoring Program Due Date: August 1, 1996

Task 4: Input into the Technical Report of Analysis of Nutrient Data in the Rio Grande Basin Due Dates: May 1, 1996, June 1, 1996, and August 1, 1996.

Issued in Austin, Texas, on March 15, 1996.

TRD-9603698 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: March 15, 1996

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Notice of Opportunity to Comment on Permitting Actions

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: (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing"; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) 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.

Consideration of the application of Meadow Woods Water Supply, Inc. to amend Water Certificate of Convenience and Necessity Number 11868 in Hays County, Texas (Application Number 30929-C, Vera Poe).

Consideration of the application of TCW Supply, Inc. to Transfer Water CCN Number 12515 from J. M. Huber Corporation; Amend Water CCN Number 11957; Cancel Water CCN Number 12515 in Hutchinson County, Texas (Application Number 30883-S, Guillermo Zevallos).

Consideration of the application of Blacksher Development Corporation for a Water CCN in Orange County, Texas (Application Number 30946-C, Darrell Nichols) .

Consideration of the application of Blacksher Development Corporation for a Sewer CCN in Orange County, Texas (Application Number 30947-C, Darrell Nichols) .

Consideration of a proposed order acting on the petition by Fulbright & Jaworski L.L.P. requesting appointment of 5 directors for Harris County Municipal Utility District Number 130. For Executive Director consideration. The petitioner requests the Commission to appoint Brooks Keys, Stephen P. Payne, and Mary Drews to terms ending May, 2000, and Steven R. Butler and Greg Ordeneaux to terms ending May, 1998 (TNRCC Internal Control Number 022696-DO2; Diego Abrego).

Signature of a Proposed Order Approving an Application by Prestonwood Forest Utility District of Harris County for Approval of $605,000 Unlimited Tax and Revenue Bonds; Third Issue; 6.358% Net Effective Interest Rate, Series 1996. The district's application requests Commission approval of a bond issue to finance improvements to the District's wastewater treatment plant, water plants, lift station, and water distribution system (TNRCC Internal Control Number 012696-D01; Randy Nelson).

Issued in Austin, Texas, on March 15, 1996.

TRD-9603686 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: March 15, 1996

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Public Notice

The Texas Natural Resource Conservation Commission published in the April 7, 1992, issue of the *Texas Register* (17 TexReg 2643), the first Priority Enforcement List (PEL) identifying illegal tire sites for which no responsible party had been identified. The following is an update to the first PEL published to delete sites cleaned up. Twenty-seven sites have been cleaned up since the last publication and are being deleted. Copies of the PEL can be obtained from the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Waste Tire Recycling Fund Program (WTRF) at 12015 Park 35 Circle, Austin, Texas 78753. Any questions regarding the implementation or operation of this program should be directed to the staff of the WTRF at (512) 239-6001.

Issued in Austin, Texas, on March 13, 1996.

TRD-9603546 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: March 13, 1996

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Executive Council of Physical Therapy and Occupational Therapy Examiners

Correction of Error

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposed an amendment to §651.1, concerning Occupational Therapy Board Fees. The rule appeared in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1236).

Section 651.1(b)(1) should read: "(1) Temporary [or Regular, Prorated Cost Per Month]:"

Section 651.1(b)(2)(A) should read: "OT-$115

Section 651.1(b)(2)(B) should read: "OTA-$90

Section 651.1(b)(4)(A) should read: "OTR-$50

Section 651.1(b)(4)(B) should read: "COTA-$35

Section 651.1(b)(5)(A) should read: "OTR-$60

Section 651.1(b)(5)(B) should read: "COTA-$45

Section 651.1(b)(8)(A) should read: "OTR-$0

Section 651.1(b)(8)(B) should read: "COTA-$0

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Public Utility Commission of Texas

Correction of Error

The Public Utility Commission of Texas adopted an amendment to §23.54, relating to Private Pay Telephone Providers. The rule appeared in the March 8, 1996, issue of the *Texas Register* (21 TexReg 1865).

Section 23.54 contained an error as submitted. In subsection (g)(1)(G), should read "RATE CAPS FOR INTRASTATE LONG DISTANCE AND OPERATOR-ASSISTED CALLS AT TEXAS PAY PHONES."

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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 of an application on March 4, 1996, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act of 1995, §§1.101(a), 2.201, 2.101(e), 2.252, 2.255, 3.252, and 3.254. A summary of the application follows.

Docket Title and Number: Application of Southwestern Electric Power Company to Amend Certificated Service Area Boundaries within Harrison County, Docket Number 15466 before the Public Utility Commission of Texas.

The Application: In Docket Number 15466, Southwestern Electric Power Company requests approval of its application to revise current certificated service area boundaries within Harrison County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on March 14, 1996.

TRD-9603628 Paula Mueller
Secretary of the Commission

Filed: March 14, 1996

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Notice of Application to File Pursuant to Public Utility Commission Substantive Rule 23.94

Notice is given to the public of a filing with the Public Utility Commission of Texas an application on February 27, 1996, pursuant to Public Utility Commission Substantive Rule 23.94 for approval of a rate change and new service offering.

Tariff Title and Number. Application of Fort Bend Telephone Company for Approval of a Rate Change and New Service Offering Pursuant to Public Utility Commission Substantive Rule 23.94. Tariff Control Number 15428.

The Application. Fort Bend Telephone Company is requesting approval to restructure the rates for remote call forwarding service and to provide a new optional service offering, select number service.

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 on or before May 5, 1996.

Issued in Austin, Texas, on March 14, 1996.

TRD-9603629 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 14, 1996

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

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Spring ISD in Houston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Spring ISD in Houston, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15507.

The Application. Southwestern Bell Telephone Company is requesting approval of a 26 station addition to the existing PLEXAR-Custom service for Spring ISD. The geographic service market for this specific service is the Houston, 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 March 14, 1996.

TRD-9603630 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 14, 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 City of Galveston in Galveston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for City of Galveston in Galveston, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15508.

The Application. Southwestern Bell Telephone Company is requesting approval of a 40 station addition to the existing PLEXAR-Custom service for City of Galveston. The geographic service market for this specific service is the Galveston, 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 March 14, 1996.

TRD-9603631 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 14, 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 Life Management Center-MHMR in El Paso, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Life Management Center-MHMR in El Paso, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15509.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Life Management Center-MHMR. The geographic service market for this specific service is the El Paso, 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 March 14, 1996.

TRD-9603632 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 14, 1996

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Railroad Commission of Texas

Notice of LP-Gas Advisory Committee Meeting

The Railroad Commission of Texas will hold a meeting of the LP-Gas Advisory Committee on April 9, 1996, in the William B. Travis Building, Room 9-147, 1701 North Congress Avenue, Austin, Texas, from 9:30 a.m.-3:00 p.m. to consider the following matters: 9:30 a.m.-Convene in Room 9-147; call to order; opening remarks; review of meeting minutes; old business 3:30 p.m.-Schedule next quarterly meeting; adjourn Items for Discussion 1. Discuss problems with installation of underground/aboveground containers 2. Discuss current LPG installations where bulkheads and ESV's are not installed 3. Consider a request concerning attachment of nameplates on stationary containers with 1, 000 A.W.C. or less 4. Discuss question from insurance company regarding DOT portable cylinders having the POL opening installed, as required in other states 5. Review current enforcement procedures and consider recommendations for improvement 6. Discuss notice to adjoining property owners 7. Demonstration by Ferrellgas of its meter in reference to out-of-gas situations 8. Discuss question regarding tack welding on cylinder storage racks (as recently adopted in §9.183(e) 9. Open discussion.

For further information, call Kellie Martinec, Rules Coordinator, Office of General Counsel, at (512) 475-1295.

Issued in Austin, Texas, on March 15, 1996.

TRD-9603673 Mary Ross McDonald
Assistant Director, Office of General Counsel, Gas Services Section
Railroad Commission of Texas

Filed: March 15, 1996

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Texas A&M University

Request for Professional Services

This request for professional services is filed pursuant to the provisions of the Texas Government Code, Chapter 2254.

Notice of Invitation:

Texas A&M University, Department of Residence Life and Housing intends to engage a firm to perform a Facility Condition Analysis of its housing facilities and support structures on the College Station campus.

The Department of Residence Life and Housing operates 2.6 million gross square feet of residence hall/apartment facilities. Included in this inventory are multistory dormitories, apartments, administrative structures and support facilities.

The analysis will include:

1. Identification of deficient conditions in Deferred Maintenance, Capital Repair, Code and Routine Maintenance.

2. Calculation of estimated cost for identification maintenance projects.

3. Prioritizing of projects.

4. Converting the non-electronic floor plan drawings to MicroStation CAD software.

5. Developing full function IBM compatible database.

Closing Date: A letter notifying TAMU of the provider's interest shall be mailed to Charles Caffee, Manager, Facilities Planning Division, The Texas A&M University System, UMS Box 1586, College Station, Texas 77843 or faxed to (409) 862-4082. Letters of interest will be received until 5:00 p.m. on Monday, April 8, 1996. All respondents will be issued a Statement of Work and other information that will identify procedure for further evaluation.

It is the intent of Texas A&M University that Historically Underutilized Businesses be afforded every opportunity to participate in this Facilities Conditions Analysis.

Issued in College Station, Texas, on March 11, 1996.

TRD-9603555 Vickie Running
Secretary of the Board of Regents
Texas A&M University

Filed: March 12, 1996

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Texas Department of Transportation

Requests 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 (RFP) #20-RFP6009 for engineering services from four Professional Engineering Firms as prime providers to provide Bridge Inspection Services for the Beaumont District. The work will be performed in Jefferson, Chambers, Liberty, Newton, Orange, Hardin, Jasper, and Tyler counties. 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 four ranked firms will be selected for contracts.

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: Liz Humphrey, 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, April 12, 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-RFP6009. 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 Wednesday, May 1, 1996, at the TxDOT, Beaumont District Office, 8350 Eastex Freeway, Beaumont, Texas 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 Liz Humphrey at (409) 898-5715 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline. Proposals for RFP #20-RFP6009 will be accepted until 5:00 p.m. on Friday, May 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 Liz Humphrey at (409) 892-7311 or Fax (409) 898-5801.

Issued in Austin, Texas, on March 15, 1996.

TRD-9603703 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: March 15, 1996

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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.

Contract(s) #09-645P5011, 09-645P5012, 09-645P5013, 09-645P5014, 09-645P5015, 09-645P5016, and 09-645P5017 for feasibility, traffic and environmental studies, schematic preparation, right of way documentation and construction plan preparation. All work will be performed on selected roadway projects 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.

Deadline. A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by Fax at (817) 867-2738, or hand-delivered to TxDOT, Waco District Office, 100 South Loop Drive, P.O. Box 1010, Waco, Texas 76703-1010, Attention: Billy S. Pigg, P.E.. Letters of interest will be received until 5:00 p.m., Wednesday, April 3, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and refer to Contract #09-645P5011 thru 09-645P5017. 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.)

Pre-proposal Meeting. A pre-proposal meeting will be held on Friday, April 8, 1996 at the Bellmead Civic Center, located at 3900 Parris, Bellmead, 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 Billy S. Pigg, (817) 867-2740 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline. Proposals for Contract #09-645P5011 thru 09-645P5017, will be accepted until 5:00 p.m., on Tuesday, April 23, 1996 at the TxDOT Waco District Office mentioned address.

Agency Contact. Requests for additional information regarding this notice of invitation should be addressed to Billy S. Pigg, P.E., (817) 867-2740 or FAX (817) 867-2738.

Issued in Austin, Texas, on March 18, 1996.

TRD-9603719 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: March 18, 1996

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Introduction: Pursuant to the Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this Notice of intent to engage a private consultant to work jointly with department personnel in the department's ongoing re-engineering process, known as Retooling TxDOT, and requests proposals from interested and qualified consulting firms for that purpose. The department has previously contracted with private consultants who assisted in the development of its methodology, business and technology architecture, and implementation tools and plans. Those participating have included Deloite & Touche, Southwest Texas State Quality Institute, and Dye Management. This current request for proposals involves completion of Phases I through III of the business process re-engineering (BPR) of its fiscal services and equipment, materials, and supplies business areas, through utilization of the customized methodology previously developed.

Fiscal Services functions include the planning, forecasting, monitoring, ensuring of fiscal accountability, collection and payment of the department's financial resources. Fiscal Services sample activities include reviewing historical spending, new legislation, and management goals, predicting budget requirements and requests, allocating and monitoring spending, billing for receivables, processing claims, collecting fees, paying vendors, contractors, and employees, and authorizing payments.

Equipment, Materials, and Supplies functions include analyzing needs for, acquiring, disposing of, and managing the department's equipment, materials, and supplies. Sample activities include analyzing equipment needs and requests, analyzing product and acquisition alternatives, developing procurement guidelines and specifications, advertising for bids, reviewing proposals, selecting vendors and products, preparing purchase orders, managing the department's fleet, monitoring equipment utilization, and inventorying equipment, materials, and supplies.

The department desires to use one consultant firm for the re-engineering of the fiscal services and the equipment, materials and supplies business areas while utilizing two dedicated cross-functional teams made up of department personnel.

The department expects that some aspects of the equipment, materials and supplies business area and possibly the fiscal services business area may be a candidate for outsourcing. The consultant will be required to have an approach for conducting a sourcing study which evaluates privatization opportunities and outsourcing. This approach and associated workplan must be integrated with the department's BPR methodology.

The department's BPR approach is designed to provide a multi-disciplinary method for implementing fundamental changes in the way work is performed across the organization. Retooling TxDOT focuses primarily on improving TxDOT's business processes and effectively applying human resources and technology to those business processes to dramatically improve performance. The approach also focuses on organizational change management, risk management, and the building of effective business cases for recommendations as key to successfully implementing business change. The Retooling TxDOT approach is comprised of the following five phases of which assistance is requested for Phases I through III including a sourcing study.

During Phase I of the approach, "Establish Change Imperative," a strategic assessment is conducted, customer and stakeholder requirements are assessed, change readiness is measured and a change imperative is documented. Methodology and change management training is conducted. The current way the department is doing business is documented to assist in analyzing areas of the business which may need to change. Process boundaries are defined and high level benchmarking is conducted. This "as-is" assessment helps build a business case for making change. The key result of this phase is a commitment to change. A sourcing study may be conducted in this phase.

During Phase II of the approach, "Create Vision and Targets," strategic issues and best practices are identified, a vision for the future business processes and performance targets are established, and change requirements are evaluated. Comparison with "best practices" of other agencies or private sector companies is performed to help define the vision. The result of this phase is a shared vision and performance expectations by which the success of new business processes can be measured. The result of this phase may also include an analysis that recommends activities for outsourcing.

During Phase III of the approach, "Redesign," business processes are redesigned (retooled), prototypes are conducted, impacts are assessed, and change programs are refined. A gap analysis is conducted between the current operations and the vision. New business processes and responsibilities as well as potentially sourced processes are designed at a high level and a series of projects are defined to accomplish the vision. Redesign of process(es) related to the sourced process(es) may be conducted in this phase. Primary results of this phase are identified business improvement projects and implementation plans for building/implementing the new process.

Note: The following phases are provided for information only, the requested assistance is limited to Phase I through Phase III outlined above.

During Phase IV of the approach, "Build," new business systems are constructed, new policies and procedures are defined, transitional arrangements are established, performance measurement criteria are designed, and detailed strategies for implementing the new processes are prepared. Results of this phase are new and/or enhanced business procedures, roles, responsibilities, and training programs ready for implementation.

During Phase V of the approach, "Implement," new processes are piloted, performance measures are tested, and a learning organization is established. In this phase, equipment is installed, training is performed, and support infrastructures are established. Results of this phase are operational retooled processes, performance measurement

mechanisms, and computer applications which are integrated with business processes.

Department Profile: With an annual budget of approximately $3 billion, the department's responsibilities include planning, designing, constructing, maintaining, and operating a comprehensive intermodal state transportation system that includes highways, public transportation, aviation, Gulf intercoastal waterways, and motor vehicle registration and titling.

The department has approximately 14,500 employees in 25 district offices located geographically across the state and 30 division and special offices located in Austin, Texas. Each district office oversees multiple area and maintenance section offices. The district offices divide responsibility for transportation system development within the state. The divisions support the activities of the districts and the department's other transportation activities.

Overview of Requested Assistance: Firms that have conducted BPR of a fiscal services and equipment, materials, and supplies function as described in the introduction or that have the capability of performing BPR are asked to provide assistance to the department. The department seeks the following general assistance: company and staff consultant experience in assisting the department's re-engineering of the fiscal services and the equipment, materials, and supplies processes; the consultants ability to adapt to the department's BPR approach; organizational change management, re-engineering the fiscal services and equipment, materials, and supplies functions to support organizational objectives; access to "best practices" databases or provide research assistance in this area; innovative practices incorporated into the business; benchmarking; conducting sourcing study; involving process stakeholders and customers in the BPR process.

Purpose: The purpose of this notice is to solicit proposals only from interested consulting firms concerning their approach to business process re-engineering as described in the introduction of this document, including a sourcing study approach integrated with the department's BPR approach. Contents of this Request for Proposal (RFP) are for guidance only and should not be viewed as constraining guidelines. The RFP defining the requirements for the requested consulting services will be made available at start of business, 8:00 a.m. on March 25, 1996. Interested firms may pick up a copy at the following address: Texas Department of Transportation, Information Resources Management Office, Anson Jones Building, 410 East Fifth Street, Third Floor, Room 303. Interested firms may also request that a copy be mailed to them by contacting the Information Resources Management Office at (512) 505-5200.

Response Date and Agency Contact: Responses to this Request for Proposal must be submitted to the following address: Texas Department of Transportation, Information Resources Management Office, Attention: Rebecca Murdock, Manager of Retooling TxDOT, 125 East 11th Street, Austin, Texas 78701-2483. Proposals will not be accepted after close of business at 4:50 p.m. , April 24, 1996. Proposals received after that date and time will not be considered. Other relevant dates and instructions are identified in the request of proposals. If you have any questions, please call (512) 505-5228.

Selection Criteria: Each proposal will be evaluated according to the consultant's ability to best satisfy the department's requirements presented in the RFP. The successful consultant must communicate in the proposal a clear understanding of the requirements and a soundness of approach in satisfying them. The successful consultant must provide documentation of ample qualifications, in terms of personnel and similar efforts, which underscore the relevance of the consultant's experience with projects of similar scope and size. More detailed selection criteria are defined in the Request for Proposals.

Proposals will be reviewed by a selection committee and a recommendation for award will be presented to the department's administration. The department's administration may approve the recommendation for award and has final authority for consent to enter into the contract.

Disclaimer: Firms responding to this public notice will not be compensated for the proposal provided. Neither TxDOT nor the responding firms are obligated or expected to receive any benefit resulting from submitting the proposal. The selected consultant may be excluded from bidding on subsequent contracts for any processes or activities outsourced or privatized as a result of this project.

Issued in Austin, Texas, on March 18, 1996.

TRD-9603718 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: March 18, 1996

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Edinburg, Texas, 210 West McIntyre, Edinburg, Texas 78540, received February 1, 1996, application for financial assistance in the amount of $2,950, 000 from the State Water Pollution Control Revolving Fund.

City of Prosper, 109 South Main Street, Prosper, Texas 75078, received February 1, 1996, application for financial assistance in the amount of $805, 000 from the Water Supply Account of the Texas Water Development Fund.

Sunbelt Fresh Water Supply District, 730 Little York, Houston, Texas 77093, received February 5, 1996, application for financial assistance in the amount of $14,500,000 from the State Water Pollution Control Revolving Fund and the Water Supply Account of the Texas Water Development Fund.

Harris County Flood Control District, 9900 Northwest Freeway, Suite 212, Houston, Texas 77092, received March 11, 1994, application for grant assistance (Second Phase Funding) in an amount not to exceed $100,000 from the Research and Planning Fund, and reallocation of existing and appropriated funds in the Water Assistance Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas, on March 13, 1996.

TRD-9603591 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: March 14, 1996

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	*No Issue Published*		
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	*No Issue Published*		
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	*First Quarterly Index*		
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	*2nd Quarterly Index*		
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	*Third Quarterly Index*		
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	*No Issue Published*		
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	*No Issue Published*		
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	*No Issue Published*		

How to Use the Texas Register

Information Available: The 13 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.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: http://www.sos.state.tx.us. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as ASCII files on diskettte. For subscription information, see the back or call the Texas Register at (800) 226-7199.

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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.

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34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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

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