

---

# TEXAS REGISTER

*Volume 21, Number 25, April 5, 1996*

*Pages 2855-3088*

---



***This month's front cover artwork:***

***Artist: Dong Vo***

*10th grade*

*Northbrook High School, SBISD, Houston*

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.

***Texas Register***, ISSN 0362-4781, is published twice weekly 100 times a year except February 23, March 15, November 8, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$95, six month \$75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at \$7 per copy in printed or electronic format.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** Director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

**POSTMASTER:** Please send form 3579 changes to the ***Texas Register***, P.O. Box 13824, Austin, TX 78711-3824.

a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569

**Secretary of State** - Antonio O. Garza, Jr.

**Director** - Dan Procter  
**Assistant Director** - Dee Wright

**Circulation/Marketing**  
Tamara Joiner  
Jill S. Ledbetter

**Texas Administrative Code**  
Dana Blanton  
Daneane Jarzombek

**Documents**  
Roberta Knight  
Jamie McCornack  
Patty Webster

**Production**  
Carla Carter  
Ann Franklin  
Mimi Sanchez

**Receptionist**  
Roy Felps

**Office of the Attorney General  
Request for Opinions**

RQ-875-DM.....2865  
RQ-876-DM.....2865

**Texas Ethics Commission**

**Ethics Advisory Opinions**

EAO-304 (AOR-336).....2867  
EAO-305 (AOR-339).....2867  
EAO-306 (AOR-340).....2867  
EAO-307 (AOR-341).....2867  
EAO-308 (AOR-342).....2867  
EAO-309 (AOR-343).....2867  
EAO-310 (AOR-344).....2867  
EAO-311 (AOR-345).....2867  
EAO-312 (AOR-346).....2867  
EAO-313 (AOR-348).....2867  
EAO-314 (AOR-349).....2867  
EAO-315 (AOR-351).....2868  
EAO-316 (AOR-352).....2868  
EAO-317 (AOR-353).....2868  
EAO-318 (AOR-354).....2868

**Proposed Sections**

**Railroad Commission of Texas**

Gas Utilities Division

16 TAC §7.84.....2869

Regulations for Compressed Natural Gas (CNG) Fuel Systems

16 TAC §§13.2004, 13.2007, 13.2010, 13.2013, 13.2016, 13.2019, 13.2022, 13.2025, 13.2028, 13.2031, 13.2034, 13.2037, 13.2040, 13.2043, 13.2046, 13.2049, 13.2052.... 2871  
16 TAC §§13.2101, 13.2104, 13.2107, 13.2110, 13.2113, 13.2116, 13.2119, 13.2122, 13.2125, 13.2128, 13.2131, 13.2134, 13.2137, 13.2140.....2882  
16 TAC §§13.2301, 13.2304, 13.2307, 13.2310, 13.2313, 13.2316, 13.2319, 13.2322, 13.2325, 13.2328 .....2886  
16 TAC §§13.2401, 13.2404, 13.2407, 13.2410, 13.2413, 13.2416, 13.2419, 13.2422, 13.2425, 13.2428, 13.2431, 13.2434, 13.2437, 13.2440.....2888  
16 TAC §§13.2501, 13.2504, 13.2507, 13.2510, 13.2513, 13.2516.....2890  
16 TAC §§13.2601, 13.2604, 13.2607, 13.2610, 13.2613, 13.2616, 13.2619, 13.2622, 13.2625, 13.2628, 13.2631, 13.2634, 13.2637, 13.2640, 13.2643 .....2891  
16 TAC §§13.2701, 13.2704, 13.2707, 13.2710, 13.2713, 13.2716, 13.2719, 13.2722, 13.2725, 13.2728, 13.2731,

13.2734, 13.2737, 13.2740, 13.2743, 13.2746, 13.2749 .....2895

**Texas Department of Licensing and Regulation**

Industrialized Housing and Buildings

16 TAC §§70.50, 70.51, 70.60, 70.61, 70.70, 70.73, 70.75, 70.77, 70.100, 70.101 .....2897

**Texas Board of Architectural Examiners**

Architecture

22 TAC §1.25 .....2901  
22 TAC §1.143 .....2901

Landscape Architecture

22 TAC §3.143 .....2902

Interior Design

22 TAC §5.153 .....2902

**Texas Board of Chiropractic Examiners**

Investigations

22 TAC §76.2 .....2902

**Texas State Board of Medical Examiners**

Applications

22 TAC §173.1 .....2903

Investigation Files

22 TAC §179.6 .....2903

Rehabilitation Orders

22 TAC §180.1 .....2903

Complaint Procedure Notification

22 TAC §188.1 .....2904

**Texas Board of Physical Therapy Examiners**

Licensing Procedure

22 TAC §329.2 .....2905

**Texas Department of Insurance**

Life, Accident, and Health Insurance and Annuities

28 TAC §§3.502-3.520..... 2905

**Texas Natural Resource  
Conservation Commission**

**River Authorities**

30 TAC §292.1, §292.2 ..... 2919  
30 TAC §292.3 ..... 2919  
30 TAC §292.11, §292.13 ..... 2920

**Water Districts**

30 TAC §§293.1, 293.3, 293.4, 293.6 ..... 2924  
30 TAC §§293.11-293.18 ..... 2925  
30 TAC §§293.11-293.15 ..... 2925  
30 TAC §§293.21, 293.22-293.25 ..... 2935  
30 TAC §§293.22-293.24 ..... 2936  
30 TAC §§293.32-293.35 ..... 2936  
30 TAC §293.41 ..... 2937  
30 TAC §§293.41, 293.42-293.44, 293.46-293.48, 293.50,  
293.55-293.57, 293.59-293.61 ..... 2938  
30 TAC §293.60 ..... 2943  
30 TAC §293.61 ..... 2943  
30 TAC §§293.62, 293.63, 293.68-293.70 ..... 2944  
30 TAC §§293.80, 293.83, 293.88 ..... 2945  
30 TAC §§293.91-293.97 ..... 2946  
30 TAC §§293.101-293.103 ..... 2949  
30 TAC §293.111 ..... 2949  
30 TAC §§293.121, 293.123, 293.124 ..... 2950  
30 TAC §§293.131, 293.132, 293.134 ..... 2950  
30 TAC §§293.141-293.143, 293.145, 293.146,  
293.148-293.150 ..... 2951  
30 TAC §§293.149-293.152 ..... 2955  
30 TAC §§293.171-293.173 ..... 2955  
30 TAC §293.177 ..... 2956  
30 TAC §293.180 ..... 2956  
30 TAC §293.201, §293.202 ..... 2956  
30 TAC §§293.301-293.311 ..... 2957  
30 TAC §293.331 ..... 2957  
30 TAC §293.341 ..... 2957  
30 TAC §§293.361-293.365 ..... 2958

**Texas Parks and Wildlife  
Department**

**Executive**

31 TAC §§51.1-51.9 ..... 2959  
31 TAC §§51.1-51.4 ..... 2959  
31 TAC §§51.71-51.79 ..... 2960

**Finance**

31 TAC §53.35 ..... 2960

**Law Enforcement**

31 TAC §§55.61-55.74 ..... 2961  
31 TAC §§55.61-55.64 ..... 2962  
31 TAC §§55.401, 55.403, 55.405, 55.407, 55.409, 55.411  
.2962

**Fisheries**

31 TAC §57.158 ..... 2963  
31 TAC §§57.181-57.184 ..... 2963

**Parks**

31 TAC §§59.201-59.215 ..... 2964

**Wildlife**

31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15,  
65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34,  
65.36, 65.37 ..... 2965  
31 TAC §§65.1, 65.3, 65.5, 65.9-65.11, 65.13, 65.15,  
65.19, 65.21, 65.24-65.29, 65.31-65.33 ..... 2966  
31 TAC §§65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50,  
65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66....  
2970  
31 TAC §§65.71, 65.72, 65.78, 65.82, 65.90, 65.91..2976  
31 TAC §§65.71, 65.72, 65.78, 65.82, 65.91 ..... 2976  
31 TAC §§65.151-65.157 ..... 2980  
31 TAC §§65.190-65.198 ..... 2981  
31 TAC §§65.190-65.208 ..... 2982  
31 TAC §§65.231-65.236 ..... 2989  
31 TAC §§65.351-65.355, 65.357-65.359, 65.364 ...2990

**Comptroller of Public Accounts**

**Tax Administration**

34 TAC §3.74 ..... 2993  
34 TAC §3.322 ..... 2995  
34 TAC §3.329 ..... 2996  
34 TAC §3.545 ..... 2997  
34 TAC §3.575 ..... 2998

**Texas Department of Human  
Services**

**Income Assistance Services**

40 TAC §3.301 ..... 2999  
40 TAC §§3.7001-3.7004 ..... 2999

**Special Nutrition Programs**

40 TAC §12.3, §12.25 ..... 3000

Medicaid Eligibility

40 TAC §15.612..... 3001

**Adopted Sections**

**Texas State Board of Medical Examiners**

Licensure  
22 TAC §163.12 ..... 3003  
  
Medical Records  
22 TAC §165.1 ..... 3003  
  
Disciplinary Guidelines  
22 TAC §190.1 ..... 3004

**General Land Office**

Coastal Area Planning  
31 TAC §§15.2-15.8, 15.10 ..... 3004  
31 TAC §15.11 ..... 3024

**Texas Parks and Wildlife Department**

Law Enforcement  
31 TAC §§55.501, 55.503, 55.505 ..... 3025  
  
Fisheries  
31 TAC §§57.371-57.373 ..... 3026

**Tables and Graphics Sections**

Tables and Graphics ..... 3027

**Open Meetings Sections**

State Office of Administrative Hearings ..... 3059  
Texas Department of Agriculture ..... 3059  
Texas Commission on Alcohol and Drug Abuse ... 3059  
Texas Council on Alzheimer’s Disease and Related Disorders..... 3060  
Texas State Board of Examiners of Professional Counselors ..... 3060  
Credit Union Department ..... 3061  
Texas Commission for the Deaf and Hard of Hearing.3062  
Texas Planning Council for Developmental Disabilities .3062  
Advisory Commission on State Emergency Communications ..... 3062  
State Employee Charitable Campaign ..... 3063  
Employees Retirement System of Texas ..... 3063  
Texas Department of Health..... 3063  
Texas Health Care Information Council..... 3063  
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments ..... 3063  
Texas Higher Education Coordinating Board ..... 3064

Texas House of Representatives.....3066  
Texas Department of Human Services.....3066  
Texas Incentive and Productivity Commission.....3066  
Texas Department of Insurance.....3067  
Commission on Jail Standards .....3067  
Texas Juvenile Probation Commission .....3068  
Texas State Library and Archives Commission.....3068  
Texas Department of Licensing and Regulation.....3068  
Texas Natural Resource Conservation Commission.3069  
Board of Nurse Examiners .....3070  
Texas Board of Nursing Facility Administrators .....3070  
Texas State Board of Pharmacy .....3071  
Texas Board of Physical Therapy Examiners .....3071  
Public Utility Commission of Texas .....3072  
Texas Residential Property Insurance Market Assistance Program .....3072  
State Board of Examiners for Speech-Language Pathology and Audiology .....3072  
Telecommunications Infrastructure Fund Board.....3073  
Texas State Technical College System .....3073  
The Texas State University System.....3074  
Texas Title Insurance Guaranty Association.....3074  
University of Houston System .....3074  
University Interscholastic League .....3074  
Texas Workers’ Compensation Commission.....3074  
Regional Meetings.....3075

**In Additions Sections**

**Coastal Coordination Council**

Rule Text Omitted .....3077

**State Council on Competitive Government**

Notice of Vendor Forum .....3077

**State Board for Educator Certification**

Executive Director Job Posting .....3077

**Texas Employment Commission**

Contract Awards.....3078

**Texas Department of Health**

Extension of Comment Period/Notice of Public Hearing. 3080  
Request for Proposals .....3081

**Heart of Texas Council of Governments**

Public Hearings .....3081

**Texas Department of Insurance**

Notice .....3081

Third Party Administrator Applications ..... 3082

**Texas Natural Resource  
Conservation Commission**

Declaration of Administrative Completeness and Notice of  
Application to Obtain a Texas Weather Modification  
License ..... 3082

Notice of Application to Appropriate Public Waters of the  
State of Texas..... 3083

Notice of Application for Temporary Permits to Appropria-  
te Public Waters of the State of Texas ..... 3084

Notice of Application for Waste Disposal Permits. 3084

Notice of Opportunity to Comment on Permitting Actions.  
3085

Notice of Public Hearing ..... 3086

**Texas Parks and Wildlife  
Department**

Notice of Public Comment Hearing ..... 3087

**Public Utility Commission of Texas**

Notice of Intent to File Pursuant to Public Utility Commis-  
sion Substantive Rule 23.27 ..... 3087

**The Texas A&M University System,  
Board of Regents**

Request for Proposal..... 3088

# ATTORNEY GENERAL

---

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

---

## Request for Opinions

**RQ-875-DM.** Request from the Honorable Ken Armbrister, Chair Committee on State Affairs, Texas State Senate, P.O. Box 12068 Austin, Texas 78711, concerning whether the federal government may convert patented state lands to another purpose, and related questions

**RQ-876-DM.** Request from the Honorable James W. Carr, Lavaca County, Attorney, Box 576, Second Floor Courthouse, Hallettsville, Texas 77964, concerning whether a county clerk must file a judgment issued by a "common law court".

TRD-9604330





# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Ethics Advisory Opinion

**EAO-304 (AOR-336).** Whether a legislative caucus may use facilities of a public university for meetings, and whether the university may provide food, transportation, and lodging.

**Summary of Opinion.** The Ethics Commission does not have jurisdiction to determine whether a public university has either statutory or constitutional authority to provide meeting facilities, food, transportation, or lodging to a legislative caucus. There is nothing in the laws under the jurisdiction of the Ethics Commission that would prohibit a legislative caucus from accepting meeting facilities, food, transportation, and lodging as an in-kind contribution from a university as long as they are not accepted during a regular legislative session or during the 30-day period before a regular legislative session. Although individual members of the legislature are subject to restrictions on the acceptance of benefits, they may accept food, transportation, and lodging as a guest of the caucus as long as they comply with any applicable reporting requirements.

**EAO-305 (AOR-339).** Whether a professor at a state university may accept a fee in addition to the professor's regular salary for performing a service outside of the professor's regular job duties.

**Summary of Opinion.** A public servant may accept an honorarium for performing services if the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

**EAO-306 (AOR-340).** Length of time a local filing authority must preserve reports filed by a candidate under title 15 of the Election Code.

**Summary of Opinion.** The Election Code requires a filing authority to preserve a campaign treasurer appointment filed by a candidate for two years after the candidate terminates that appointment. The Election Code requires a filing authority to preserve each report of contributions and expenditures filed by a candidate for two years after the date of filing.

**EAO-307 (AOR-341).** Whether a district judge who accepted political contributions in connection with a 1996 judicial election but eventually decided not to run may use those contributions to make officeholder expenditures or to make campaign expenditures in connection with a future judicial election.

**Summary of Opinion.** A district judge who accepted contributions in connection with a 1996 judicial election and eventually decided not to run may use those contributions to make officeholder expenditures or to make campaign expenditures in connection with a future judicial election.

**EAO-308 (AOR-342).** Whether records maintained by an officeholder in accordance with §254.001 of the Election Code are public records.

**Summary of Opinion.** "Backup records" maintained by a candidate or officeholder pursuant to §254.001 of the Election Code are not public records under title 15 of the Election Code. Whether such records are public information under the Government Code, Chapter 552 is a question for the attorney general.

**EAO-309 (AOR-343).** Whether members of the Crime Victims' Institute Advisory Council are required to file annual personal financial statements under chapter 572 of the Government Code.

**Summary of Opinion.** Members of the Crime Victims' Institute Advisory Council are not required to file annual personal financial statements with the Texas Ethics Commission.

**EAO-310 (AOR-344).** Whether an officeholder may use political contributions to pay legal expenses incurred in connection with federal and state investigations of the officeholder for public corruption.

**Summary of Opinion.** An officeholder may use political contributions to pay legal expenses incurred in connection with federal and state investigations of the officeholder for public corruption.

**EAO-311 (AOR-345).** Whether a person appointed to the Texas Structural Pest Control Board as an industry member pursuant to Texas Civil Statutes, Article 135b-6, section 3(a), may engage in certain activities.

**Summary of Opinion.** A member of the Structural Pest Control Board should not teach certification or training courses for licensed pest control applicators, or consult with structural pest control businesses concerning problems that could result in disputes before the board.

**EAO-312 (AOR-346).** Whether an employee of a city police department in Texas may accept a fee for performing services as an expert fingerprint examiner in a criminal case in Louisiana.

**Summary of Opinion.** Under section 36.07 of the Penal Code a public servant may accept an honorarium for performing services as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

**EAO-313 (AOR-348).** Whether an officeholder may use political contributions to pay for property damages caused in the discharge of the officeholder's official duties.

**Summary of Opinion.** An officeholder may use political contributions to pay for damages to property caused in the discharge of the officeholder's official duties.

**EAO-314 (AOR-349).** Whether a judicial candidate may spend political contributions to hold a victory party in conjunction with a charity golf tournament.

**Summary of Opinion.** A judicial candidate may spend political contributions to hold a victory party in conjunction with a charity golf tournament.

**EAO-315 (AOR-351).** Who is liable for a fine imposed for the late filing of a general-purpose political committee's report of contributions and expenditures.

**Summary of Opinion.** The campaign treasurer of general-purpose committee is liable for any fine imposed for filing a committee report late.

**EAO-316 (AOR-352).** Whether a person who is an "equity member" of a law firm operated as a professional corporation and who is also on the governing board of a state agency may act on a matter before the state agency that involves the financial interests of a client of the law firm.

**Summary of Opinion.** The fact that an agency board member's law firm represents a client in matters not involving the board does not, by itself, create "a personal or private interest" on the part of the board member in a matter on which the client is seeking board action.

**EAO-317 (AOR-353).** Whether a member of the legislature may use campaign contributions received in connection with campaigns for the legislature to campaign for another office.

**Summary of Opinion.** As a general rule, the Texas Election Code does not prohibit the use of campaign contributions received in

connection with one office to campaign for another office. There are, however, certain restrictions on using contributions accepted in connection with a nonjudicial office to make campaign expenditures in connection with a judicial office and on using contributions accepted in connection with a judicial office to make campaign expenditures in connection with a nonjudicial office. Also, federal law may restrict the use of contributions accepted in connection with a state or local office to make campaign expenditures in connection with a campaign for federal office.

**EAO-318 (AOR-354).** Whether a member of the Board of Public Accountancy may provide continuing education courses to board licensees and related questions.

**Summary of Opinion.** A member of the Board of Public Accountancy should not provide courses in a private capacity that satisfy continuing education requirements for board licensees. Nor should a board member conduct reviews that are required by the board.

Issued in Austin, Texas, March 28, 1996.

TRD-9604446      Tom Harrison  
Executive Director  
Texas Ethics Commission

Filed: March 29, 1996



# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION Part I. Railroad Commission of Texas Chapter 7. Gas Utilities Division

### Substantive Rules

#### • 16 TAC §7.84

The Railroad Commission of Texas proposes an amendment to §7.84 by adding a new subsection (e) that would require the filing of hazardous liquid spill response plans, and relabeling current subsection (e) as subsection (f). The proposal implements Texas Natural Resource Code, §117.012, which gives the commission the authority to adopt rules requiring operators of hazardous liquids pipeline facilities to prepare and submit for commission approval a facility response plan for those facilities located landward of the coast. Consistent with the provisions of Texas Natural Resources Code, §117.012(e), the new subsection requires that operators file at the commission a copy of any facility response plan prepared under the authority conferred on the United States Department of Transportation Office of Pipeline Safety by the federal Oil Pollution Act of 1990 (Pub. L. 101-380). The copy of the facility response plan must be filed at the commission within 60 days of the effective date of this amendment to §7.84 or simultaneously with filing the facility response plan with the United States Department of Transportation Office of Pipeline Safety, whichever is later.

Mary McDaniel, P.E., assistant director, Pipeline Safety Section, Gas Services Division, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The fiscal implications result from the expenditure of staff time to review the spill response plans; however, that review will be performed by current staff and the commission will not hire additional staff to perform this function. There will be no effect on local government as a result of enforcing or administering the section as proposed.

Ms. McDaniel also has determined that the public benefit anticipated as a result of a state agency review of the oil spill response plans that affect the State of Texas will be an enhanced ability for the state agencies with discharge prevention and spill response oversight authority to coordinate with the United States Department of Transportation Office of Pipeline Safety in the event of a spill and thereby avoid duplicative or ineffective efforts.

There will be a nominal cost to any small business required to comply with the section as proposed, that is, the cost of making a copy of the facility response plan already required to be prepared and filed at the United States Department of Transportation Office of Pipeline Safety, and filing that copy with the commission. The economic cost to any persons who required to comply with the section as proposed will be the same as for small businesses.

Comments on the proposal may be submitted to Mary McDaniel, P.E., Assistant Director, Pipeline Safety Section, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*. For additional information call Mary McDaniel at (512) 463-7166.

The amendment is proposed pursuant to Texas Natural Resources Code, §117.012(d), which gives the commission authority to adopt rules that require a hazardous liquid pipeline facility to prepare and submit for commission approval a facility response plan for all or any part of a hazardous liquid pipeline facility located landward of the coast.

Texas Natural Resources Code, §117.012, is affected by this proposed amendment.

#### *§7.84. Required Records and Reporting.*

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

(e) **Facility response plans. Within 60 days of the effective date of this rule or simultaneously with filing a facility response plan at the United States Department of Transportation, whichever is later, each operator shall submit to the Pipeline Safety Section a copy of the facility response plan prepared under the Oil Pollution Act of 1990, for all or any part of a hazardous liquid pipeline facility located landward of the coast for commission review.**

(f)[(e)] Records. Each operator shall maintain and have available for inspection the same documents and records required by the Code of Federal Regulations, Title 49, Part 195, and such additional records as the Commission from time to time may require. These documents and records shall be retained for the period established for interstate operators by the Code of Federal Regulations, Title 49, Part 195, or for a period of not less than five years if no such federal requirement has been established. These records shall include, but not be limited to, the following:

(1) records of all design and installation of new and used pipe, including design pressure calculations, pipeline specifications, specified minimum yield strength and wall-thickness calculations, each valve, fitting, fabricated branch connection, closure, flange connection, station piping, fabricated assembly, and above-ground breakout tank;

(2) records of all pipeline construction, procedures, training, and inspection pertaining to welding, nondestructive testing, and cathodic protection;

(3) records of all hydrostatic testing performed on all pipeline segments, components, and tie-ins;

(4) records involved in the performance of the procedures outlined in the Operations and Maintenance Procedure Manual.

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 26, 1996.

TRD-9604231

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

Earliest possible date of adoption: May 6, 1996

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

## Chapter 13. Regulations for Compressed Natural Gas (CNG) Fuel Systems

The Railroad Commission of Texas proposes new §§13.2004, 13.2007, 13.2010, 13.2013, 13.2016, 13.2019, 13.2022, 13.2025, 13.2028, 13.2031, 13.2034, 13.2037, 13.2040, 13.2043, 13.2046, 13.2049, and 13.2052, relating to applicability, severability, and retroactivity; definitions; LNG report forms; categories of licenses; licensing requirements; examination and course of instruction; denial, suspension, or revocation of licenses or certifications, and hearing procedure; designation of outlet and operations supervisor (branch manager); franchise tax certification and assumed name certificates; insurance requirements; self-insurance requirements; components of LNG stationary installations not specifically covered; filings and notice requirements for stationary LNG installations; temporary installations; filings required for school bus, mass transit and special transit vehicles; report of LNG incident/accident; and application for an exception to a safety rule. These proposed new sections in subchapter G, relating to general applicability and requirements, specify administrative procedures such as licensing requirements, hearings, filings required for certain types of liquefied natural gas (LNG) activities, including notice to adjoining property owners, reports of accidents, and applications for exceptions to rules, as well as specifying other types of requirements such as insurance, and franchise tax and assumed name certificates.

The Railroad Commission also proposes new §§13.2101, 13.2104, 13.2107, 13.2110, 13.2113, 13.2116, 13.2119, 13.2122, 13.2125, 13.2128, 13.2131, 13.2134, 13.2137, and 13.2140, relating to uniform protection requirements; uniform safety requirements; stationary LNG storage containers; LNG container installation distance requirements; maintenance tanks; transfer of LNG; transport vehicle loading and unloading facilities and procedures; transfer systems, including piping, pumps, and compressors, used for LNG and refrigerants; hoses and arms; communications and lighting; fire protection; container purging procedures; employee safety and training; and inspection and maintenance. These sections in proposed new subchapter H, relating to general rules for all stationary LNG installations, describe specific distance and protection requirements for stationary installations, procedures to be used for LNG transfer, safety devices required such as lighting and communication devices, and procedures for employee training and inspection of installations.

The Railroad Commission also proposes new §§13.2301, 13.2304, 13.2307, 13.2310, 13.2313, 13.2316, 13.2319, 13.2322, 13.2325, and 13.2328, relating to applicability; general facility design; indoor fueling; emergency refueling; fuel dispensing systems; filings required for installation of fuel dispensers; automatic fuel dispenser safety requirements; protection of automatic and other dispensers; LNG transport unloading at fueling facilities; and training, written instructions, and procedures required. These sections in proposed new subchapter J, relating to general rules for LNG fueling facilities, contain rules on fueling facility design, procedures for indoor or emergency fueling, filings required for fuel dispensers, requirements for automatic and other dispensers, and employee training and procedures.

The Railroad Commission also proposes new §§13.2401, 13.2404, 13.2407, 13.2410, 13.2413, 13.2416, 13.2419, 13.2422, 13.2425, 13.2428, 13.2431, 13.2434, 13.2437, and 13.2440, relating to general provisions for piping systems and components; piping materials; fittings used in piping; valves; installation of piping; installation of valves; welding at piping installations; pipe marking and identification; pipe supports; inspection and testing of piping; welded pipe tests; purging of piping systems; pressure and relief valves in piping; and corrosion control. These sections in proposed new subchapter K, relating to piping systems and components for all stationary LNG installations, include rules on piping systems and components, valves, pipe markings, inspections, testing, types of valves required, and other protection measures.

The Railroad Commission also proposes new §§13.2501, 13.2504, 13.2507, 13.2510, 13.2513, and 13.2516, relating to liquid level gauging; pressure gauges; vacuum gauges; emergency failsafe; electrical

equipment; and electrical grounding and bonding. These sections in proposed new subchapter L, relating to instrumentation and electrical services, describe requirements for types of gauges and electrical equipment.

The Railroad Commission also proposes new §§13.2601, 13.2604, 13.2607, 13.2610, 13.2613, 13.2616, 13.2619, 13.2622, 13.2625, 13.2628, 13.2631, 13.2634, 13.2637, 13.2640, and 13.2643, relating to applicability; system component qualification; vehicle fuel containers; installation of vehicle fuel containers; engine fuel delivery equipment; installation of venting systems and monitoring sensors; installation of piping; installation of valves; installation of pressure gauges; installation of pressure regulators; wiring; vehicle fueling connection; signs and labeling; system testing; and maintenance and repair. These sections in proposed new subchapter M, relating to engine fuel systems, delineate requirements for the manufacture and installation of containers and systems on vehicles, including labeling, testing, and maintenance.

The Railroad Commission also proposes new §§13.2701, 13.2704, 13.2707, 13.2710, 13.2713, 13.2716, 13.2719, 13.2722, 13.2725, 13.2728, 13.2731, 13.2734, 13.2737, 13.2740, 13.2743, 13.2746, and 13.2749, relating to DOT requirements; registration of LNG transports; testing requirements; markings; pressure gauge; supports; electrical equipment and lighting; liquid level gauging devices; exhaust systems; extinguishers required; manifests; transfer of LNG on public highways, streets, or alleys; parking of LNG transports and container delivery units, and use of chock blocks; uniform protection standards; inspection of transport containers; delivery of inspection report to licensee; and issuance of LNG Form 2004 decal. These sections in proposed new subchapter N, relating to LNG transports, specify requirements for the tanker-type vehicles which deliver LNG to stationary installations and fueling facilities. Proposed requirements include registration of transports, safety devices required such as gauges, exhaust systems, fire extinguishers, and other equipment, filings and inspections required, procedures for parking of transports and transfer of LNG on roadways, and inspection requirements.

The new sections, collectively known as the *Regulations for Liquefied Natural Gas*, implement the statutory authority delegated to the commission by the legislature to adopt rules specifying requirements for the construction, installation and operation of stationary installations and engine fuel systems, as well as licensing and registration requirements.

The commission proposes the new sections to provide for the safe handling of LNG and to protect the health, safety, and welfare of the public. LNG is a cryogenic fuel which is liquefied and stored at approximately -260 degrees Fahrenheit, composed primarily of methane, and usually delivered by transports rather than pipelines. LNG is commonly used by large fleet operations; its physical characteristics and equipment required for operation make it uneconomical for use in personal vehicles. The new sections are consistent with nationally recognized standards.

Two public hearings were held to take comments from interested persons regarding these regulations. A working draft of the regulations was made available prior to both hearings. Comments at both hearings were generally favorable; comments and corrections offered concerned minor or technical matters. The LNG advisory committee, appointed by the Railroad Commission, met twice to review and revise the working draft, and has approved the proposed new sections.

One technical issue which is not addressed in these regulations is the use of odorization as a leak detection method. Other types of gaseous fuels, such as liquefied petroleum gas and pipeline natural gas, are combined with a material having a distinctive odor ("odorant") in order to allow persons to detect the presence of the fuel and to detect leaks. Because the natural gas liquefaction process removes the odorants which have previously been added to the natural gas, many in the industry believe that an odorant should be added back into the LNG after liquefaction. Others believe that odorization of LNG is impossible, others maintain it is possible as it is currently being done, while yet others concede that it may be possible, but that the technology is not adequately developed or commercially available. Although odorization was discussed at both public meetings, given the lack of scientific evidence to prove its effectiveness, the commission at this time is not proposing to require odorization. However, in §13.2101 (relating to uniform protection requirements) and §13.2616 (relating to installation of venting systems and monitoring sensors), the commission proposes to require monitors for both stationary installations and public transportation vehicles.

Another issue which is addressed in some nationally recognized standards is liquefaction facilities. The earlier working drafts of these regulations, which were circulated to the public, included extensive rules on liquefaction facilities. With the action of the 74th legislature to remove liquefaction from the LP-gas section's statutory authority, the related draft rules have been deleted from this proposed version.

These regulations do not apply to original equipment manufacturers, liquefaction facilities, locomotives, railcar tenders, marine terminals, loading or unloading of LNG on watercraft, or fuel cells approved by the Federal Aviation Administration for use in hot air balloons. As permitted under Texas Natural Resources Code, §116.031(a)(2), the proposed regulations exempt mass transit authorities, common users of LNG, from licensing requirements if they use LNG only for their own vehicles. However, even though certain LNG entities, referred to as "nonlicensees," are not required to be licensed, their facilities may have to comply with other *Regulations for Liquefied Natural Gas*. Persons required to be licensed include anyone who sells or performs any LNG service to the public; public or private entities performing LNG activities for their own use only are not required to be licensed.

Thomas D. Petru, assistant director, Gas Services Division, has determined that for the first five-year period the sections are in effect there will be some fiscal implications for state government as a result of enforcing or administering the sections, including some increased revenue from fees paid for licensing, certification, and registration requirements. Because the LNG industry is relatively new in Texas, it is impossible to estimate a specific dollar amount; however, revenue received will be used in accordance with state agency appropriations and budgeting processes. There are no fiscal implications for local government.

Mr. Petru 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 standardized regulations for LNG operations in Texas and a resultant increase in safety. There is an anticipated economic cost of compliance to small businesses and to persons as a result of enforcing or administering the sections as proposed. Current LNG operators would not experience additional costs to comply because of the safety requirements, but only for the licensing requirements. The anticipated cost depends on the type of license for which applicants apply, and ranges from \$52 to \$502 for original licenses, and \$27 to \$302 for renewals. The exact cost cannot be determined because the cost will depend on the type and number of licenses required for an applicant's LNG operations, the number of employees the applicant wishes to license or certify and the applicable costs for training and testing, and the number of transports to be registered. In addition, insurance requirements will vary depending on the applicant's insurance history, carrier, and type of operations to be covered; some carriers may lower insurance costs for installations or vehicles which comply with accepted regulations and design standards.

Another anticipated economic cost of compliance to small businesses and individuals relates to the requirements for monitoring sensors for both stationary installations and public transportation vehicles. These sensors range from \$600 to \$750 per sensor; the exact cost for a stationary installation cannot be determined, but will depend on the manufacturer's instructions regarding the effective area of coverage for a particular device, the size of the installation, and the type of LNG activities performed. The exact cost to equip public transportation vehicles with monitoring sensors also depends on the size of the vehicle and the manufacturer's instructions, but could range from \$600 to \$750 per sensor. Again, persons currently engaged in LNG activities may already be using such devices and therefore would not incur additional costs as a result of these rules.

Comments on the proposal 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 should refer to LP-Gas Docket Number 1281 and will be accepted for 60 days after publication in the *Texas Register*. For more information concerning the proposed rules, contact Thomas D. Petru at (512) 463-6949.

## Subchapter G. General Applicability and Requirements

- 16 TAC §§13.2004, 13.2007, 13.2010, 13.2013, 13.2016, 13.2019, 13.2022, 13.2025, 13.2028, 13.2031, 13.2034, 13.2037, 13.2040, 13.2043, 13.2046, 13.2049, 13.2052

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

### *§13.2004. Applicability, Severability, and Retroactivity.*

(a) The *Regulations for Liquefied Natural Gas* are intended to apply to the design, installation, and operation of liquefied natural gas (LNG) dispensing systems, the design and installation of LNG engine fuel systems on vehicles of all types and their associated fueling facilities, and the construction and operation of equipment for the storage, handling, and transportation of LNG. These standards do not apply to locomotives, railcar tenders, marine terminals, or to the transportation, loading, or unloading of LNG on ships, barges, or other types of watercraft, or to any fuel cell approved by the Federal Aviation Administration and intended to be used solely as a fuel cell for aircraft, including hot air balloons. From the point at which LNG in a system has been vaporized and converted to compressed natural gas (CNG), the equipment and components must comply with the commission's *Regulations for Compressed Natural Gas*.

(b) If any term, clause, or provision of these rules is for any reason declared invalid, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

(c) Nothing in these rules shall be construed as requiring, allowing, or approving the unlicensed practice of engineering or any other professional occupation requiring licensure.

(d) Unless otherwise stated, the *Regulations for Liquefied Natural Gas* are not retroactive; however, the Railroad Commission of Texas has jurisdiction over all LNG installations in Texas and installations placed into operation after August 1, 1996, shall comply with these regulations. All other LNG installations in operation prior to August 1, 1996, shall be maintained and operated in a safe manner as determined by the Railroad Commission of Texas.

*§13.2007. Definitions.* The following words and terms when used in the *Regulations for Liquefied Natural Gas*, shall have the following meanings, unless the context clearly indicates otherwise.

Administrative Procedure Act—Texas Government Code, Chapter 2001.

Aggregate water capacity—The sum of all individual container capacities as measured by weight or volume of water when the containers in a battery at an installation are full.

ANSI—American National Standards Institute.

API—American Petroleum Institute.

ASME—American Society of Mechanical Engineers.

ASME Code—The American Society of Mechanical Engineers *Boiler and Pressure Vessel Code*, Section I, Section IV, Section VIII, and Section IX.

Automatic fuel dispenser—A fuel dispenser which requires transaction authorization.

Branch manager—See "Operations supervisor."

Certified—Authorized to perform LNG activities under the direction of a licensee as set forth in the Texas Natural Resources Code. Certification alone does not allow an employee to perform those activities which require licensing.

Combustible material—A solid material which, in the form in which it is used and under the conditions anticipated, can be ignited and will burn, support combustion, or release flammable vapors when subjected to fire or heat.

Commercial installation—An LNG equipment installation located on premises other than a single-family dwelling used primarily as a residence.

Commission—Any operating division of the Railroad Commission of Texas or any of the division's employees.

Company representative—An owner or employee of a licensee designated by that licensee to take any required courses and exams and to actively supervise LNG operations of the licensee.

Container—Any LNG vessel manufactured to the applicable sections of the API Code, ASME Code, or DOT requirements in effect at the time of manufacture.

Container appurtenances—Components installed in container openings, including but not limited to pressure relief devices, shutoff valves, backflow check valves, excess flow check valves, internal valves, liquid level gauges, pressure gauges, and plugs.

Conversion—The changes made to a vehicle to allow it to use LNG as a motor fuel.

Design pressure—The pressure for which a system or portion of that system is designed.

Dike—A structure used to establish an impounding area.

Dispensing system—That combination of valves, meters, hoses, piping, electrical connections, and fuel connections used to distribute LNG to mobile or motor fuel containers.

Division—The Liquefied Petroleum Gas Section, Gas Services Division of the Railroad Commission of Texas.

DOT—The United States Department of Transportation.

Employee—Any individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, full-time or permanent basis; independent contractors; and owner-employees.

Failsafe—Design features which provide for safe conditions in the event of a malfunction of control devices or an interruption of an energy source or an emergency shutdown.

Final approval—The authority issued by the commission or the Railroad Commission allowing the introduction of LNG into a container and system.

Fired equipment—Any equipment in which the combustion of fuels takes place.

Fixed-length dip tube—A pipe with a fixed open end positioned inside a container at a designated elevation to measure a liquid level.

General Rules of Practice and Procedure of the Railroad Commission of Texas—16 Texas Administrative Code, Chapter 1.

Ignition source—Any item, substance, or event having adequate temperature and energy release of the type and magnitude sufficient to ignite any flammable mixture of gases or vapors that could occur at a site.

Impounding area—An area defined through the use of dikes or the topography at the site for the purpose of containing any accidental spill of LNG.

Individual—One human being. (See also "Person".)

Interim approval—The authority issued by the Railroad Commission following a public hearing allowing construction of an LNG installation.

Labeled—The attachment to equipment or materials of a label, symbol, or other identifying mark of a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and which publishes its findings in a list indicating that the equipment either meets appropriate standards or has been tested and found suitable for use in a specified manner.

LFL—Lower flammability limit.

Licensed—Authorized to perform LNG activities through the issuance of a valid license by the Liquefied Petroleum Gas Section.

Licensee—A person which has applied for and been granted an LNG license by the commission.

Listed—The inclusion of equipment or materials in a list published by a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

LNG—Natural gas, consisting primarily of methane, that has been condensed to liquid by cooling.

LNG system—A system of safety devices, containers, and other LNG equipment installed at a facility or on a vehicle and designed for use in the sale, storage, transportation for delivery, or distribution of LNG.

LNG transport—Any vehicle or combination of vehicles and LNG containers designed or adapted for use or used principally as a means of moving or delivering LNG from one place to another, including but not limited to any truck, trailer, semi-trailer, cargo tank, or other vehicle used in the distribution of LNG.

Mass transit vehicle—Any vehicle which is used primarily in the conveyance of the general public.

Maximum allowable working pressure—The maximum gauge pressure permissible at the top of completed equipment, containers, or vessels in their operating position for a design temperature.

Mobile fuel container—An LNG container mounted on a vehicle and used to store LNG as the fuel supply for uses other than motor fuel.

Mobile fuel system—An LNG system to supply fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

Motor fuel container—An LNG container mounted on a vehicle and used to store LNG as the fuel supply to an engine used to propel the vehicle.

Motor fuel system—An LNG system to supply LNG as a fuel for an engine used to propel the vehicle.

NEC—National Electric Code (NFPA 70).

NFPA—National Fire Protection Association.

Noncombustible material—A solid material which in no conceivable form or combination with other material will ignite.

Nonlicensee—A person not required to be licensed, but which shall comply with all other applicable *Regulations for Liquefied Natural Gas*.

Operations supervisor—An individual who actively supervises LNG operations at an outlet.

Outlet—A site operated by an LNG licensee at which the business conducted materially duplicates the operation for which the licensee is initially granted a license.

Person—An individual, sole proprietor, partnership, firm, joint venture, corporation, association, or any other business entity, state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

Point of transfer—The point at which a connection is made to transfer LNG from one container to another.

Pressure relief valve—A valve which is designed both to open automatically to prevent a continued rise of internal fluid pressure in excess of a specified value (set pressure) and to close when the internal fluid pressure is reduced below the set pressure.

Pressure vessel—A container or other component designed in accordance with the ASME Code.

Primary component—Those safety-related components which may be stressed to a significant level, those whose failure would permit release of flammable fluids, and those subject to thermal shock. Primary components include but are not limited to the following parts of a single-wall tank or of the inner tank in a double-wall tank: seals, gaskets, shell plates, bottom plates, roof plates, knuckle plates, compression rings, shell stiffeners, manways, and nozzles including reinforcement, shell anchors, pipe, tubing, forging, and bolting.

Property line—That boundary which designates the point at which one real property interest ends and another begins. (See also "Right-of-way").

PSF—Pounds per square foot.

PSI—Pounds per square inch.

PSIG—Pounds per square inch gauge.

PSIA—Pounds per square inch absolute.

Public transportation vehicle—A vehicle for hire or service to the general public including but not limited to taxis, buses, and airport courtesy cars.

Railroad Commission of Texas—The members of the Railroad Commission of Texas.

Repair to container—The correction of damage or deterioration to an LNG container, the alteration of the structure of such a container, or the welding on such a container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

Representative—The individual designated by a license applicant or licensee as the principal individual in authority who is responsible for actively supervising the licensee's LNG activities.

Right-of-way—The strip of land over which a public roadway such as a street, alley, or highway is built, or land occupied by a railroad for its main line.

School—A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

School bus—A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

Special transit vehicle—A vehicle which is primarily used by a school or mass transit authority for special transit purposes such as transport of mobility impaired persons.

TEMA—Tubular Exchanger Manufacturers Association.

Temporary installation—A dispensing station, either skid-mounted or on a transport unit, that is intended to be used for a finite period of time.

Tentative approval—The authority issued by the commission without a hearing allowing construction of an LNG installation.

Thermal expansion relief valve—A pressure relief valve that is activated by pressure created by a fluid temperature rise.

Trainee—An individual employed by a licensee for a period not to exceed 45 days without that individual having successfully completed the required examinations for the LNG activities to be performed.

Transfer area—That portion of an LNG refueling station where LNG is introduced into or dispensed from a stationary installation.

Transfer system—All piping and equipment used in transferring LNG between containers.

Transition joint—A connector fabricated of two or more metals used to join piping sections of two different materials.

Ultimate consumer—The person controlling LNG immediately prior to its ignition.

Vaporizer—A device other than a container that receives LNG in liquid form and adds sufficient heat to convert the liquid to a gaseous state.

Water capacity—The amount of water in gallons required to fill a container.

*§13.2010. LNG Report Forms.* Under the provisions of the Texas Natural Resources Code, Chapter 116, the commission has designated the following forms for use by the division.

- (1) LNG Form 2001. Application for License.
- (2) LNG Form 2001A. Branch Outlet List.
- (3) LNG Form 2003. Liquefied Natural Gas License.
- (4) LNG Form 2004. Liquefied Natural Gas Vehicle Identification.
- (5) LNG Form 2005. Manufacturer's Data Report.
- (6) LNG Form 2007. Liquefied Natural Gas Truck Registration.

(7) LNG Form 2008. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing.

(8) LNG Form 2016. Application for Examination.

(9) LNG Form 2016A. Certified Employee Transfer Certification.

(10) LNG Form 2018. Statement of Lost or Destroyed License.

(11) LNG Form 2018B. Statement of Lost or Destroyed LNG Form 2004.

(12) LNG Form 2020. Report of LNG Incident/Accident.

(13) LNG Form 2021. Notice of Intent to Appear.

(14) LNG Form 2023. Statement in Lieu of Container Testing.

(15) LNG Form 2025. Application and Notice of Exception to the *Regulations for Liquefied Natural Gas*.

(16) LNG Form 2026. Franchise Tax Certification.

(17) LNG Form 2027. Application for Qualification as Self-Insurer.

(18) LNG Form 2028. Application to Use Irrevocable Letter of Credit

(19) LNG Form 2500. Application for Tentative Approval.

(20) LNG Form 2500A. Notice of Proposed LNG Installation.

(21) LNG Form 2501. Completion Report for Commercial Installations of Less Than 15,540 Gallons Aggregate Capacity.

(22) LNG Form 2503. Application to Install an LNG System on School Bus, Mass Transit, or Special Transit Vehicles.

(23) LNG Form 2504. Notice of Subsequent Installation or Conversion.

(24) LNG Form 2505. Testing Procedures Certification.

(25) LNG Form 2506. Impounding Area Exemption Application.

(26) LNG Form 2995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.

(27) LNG Form 2996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.

(28) LNG Form 2996B. Statement in Lieu of Filing Certifying Workers' Compensation Coverage, Including Employer's Liability Insurance or Alternative Accident/Health Insurance.

(29) LNG Form 2997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(30) LNG Form 2997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(31) LNG Form 2998A. Certificate of Insurance, General Liability.

(32) LNG Form 2998B. Statement in Lieu of General Liability Insurance and/or Completed Operations and Products Liability Insurance.

*§13.2013. Categories of Licenses.*

(a) A prospective licensee may apply to the commission for a license to engage in one or more of the categories specified in

subsection (b)(1)-(8) of this section. Fees required to be paid shall be those established by the commission and in effect at the time of licensing or renewal, as specified in Table 1 of this section.

Figure 1: 16 TAC §13.2013(a)

(b) The license categories are as follows:

(1) A Category 15 license for container manufacturers and/or fabricators authorizes the manufacture, fabrication, assembly, repair, installation, testing, and sale of LNG containers, including LNG motor or mobile fuel containers and systems, and the repair of transport and transfer systems for use in Texas.

(2) A Category 20 license for transport outfitters authorizes the subframing, testing, and sale of LNG transport containers, the testing of LNG storage containers, and the installation, testing, and sale of LNG motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems for use in Texas.

(3) A Category 25 license for carriers authorizes the transportation of LNG by transport, including the loading and unloading of LNG.

(4) A Category 30 license for general installers and repairmen authorizes the sale, repair, service, and installation of stationary containers and LNG systems.

(5) A Category 35 license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LNG to both retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LNG containers.

(6) A Category 40 license for general public dispensing stations authorizes the storage, sale, and dispensing of LNG into motor and mobile fuel containers.

(7) A Category 45 license for motor fuel authorizes the sale and installation of LNG motor or mobile fuel containers, and the sale, repair, and installation of LNG motor or mobile fuel systems.

(8) A Category 50 license for testing laboratories authorizes the testing of LNG containers, LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LNG service, including the necessary installation, disconnection, reconnection, testing, and repair of LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers.

(c) An original manufacturer of a new motor vehicle powered by LNG, or a subcontractor of a manufacturer who produces a new LNG powered motor vehicle for the manufacturer, is not subject to the licensing requirements of this title, but shall comply with all other *Regulations for Liquefied Natural Gas*.

(d) Public or private entities performing LNG activities for their own vehicles are not required to be licensed. Public or private entities performing any LNG activities for the general public are required to be licensed.

#### §13.2016. Licensing Requirements.

(a) Applicants for a license or license renewal shall file with the commission LNG Form 2001 designating a company representative who shall be an owner or employee of the licensee, and shall be directly responsible for actively supervising LNG operations of the licensee. A licensee may have more than one company representative.

(1) An applicant for license may not engage in LNG activities until its company representative has successfully completed the management examination administered by the commission.

(2) The licensee shall notify the commission in writing upon termination of its company representative and shall at the same time designate a replacement by submitting a new LNG Form 2001.

(3) The licensee shall cease LNG activities if, at the termination of its company representative, there is no other qualified company representative of the licensee acknowledged and recorded by the commission. The licensee shall not resume operation until such time as it has a qualified company representative, unless it has been granted an extension of time in which to comply as specified in §13.2052 of this title (relating to application for an exception to a safety rule).

(b) Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(c) Licensees shall maintain a copy of the current version of the *Regulations for Liquefied Natural Gas* published by the commission and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours. Failure to maintain the required number of copies may result in enforcement action such as penalties or suspension of licenses.

(d) Licensees and operations supervisors at each outlet shall have all current licenses and certificates available for inspection during regular business hours.

(e) In addition to complying with other licensing requirements set out in the Texas Natural Resources Code and the *Regulations for Liquefied Natural Gas*, applicants for license or license renewal in the following categories shall comply with the specified additional requirements:

(1) A Category 15 licensee shall file with the commission for each of its outlets legible copies of:

(A) its current DOT authorization. A licensee may not continue to operate after the expiration date of the DOT authorization; and

(B) its current ASME Code, Section VIII certificate of authorization. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the licensee may request in writing an extension of time from the commission not to exceed 60 calendar days past the expiration date. The licensee's request for extension shall be received by the commission prior to the expiration date of the ASME certificate of authorization and shall include a letter or statement from ASME that ASME is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A licensee shall not continue to operate after the expiration date of an ASME certificate of authorization until the licensee files a current ASME certificate of authorization with the commission, or the commission grants a temporary extension.

(2) A Category 15 or 20 licensee making repairs on ASME containers shall file with the commission a legible copy of its current "U" certificate of authorization for the repair of ASME containers by the National Board of Boiler and Pressure Vessel Inspectors.

(3) A Category 50 licensee shall file a properly completed LNG Form 2505 with the commission, certifying that the applicant will follow the testing procedures indicated. The LNG Form 2505 shall be signed by the company representative designated on LNG Form 2001.

(f) The commission shall notify the licensee at the last filed address on LNG Form 2001 of the impending license expiration at least 30 days prior to the expiration date. Renewals shall be submit-



ted to the commission along with the renewal fee specified in Table 1 of §13.2013 of this title (relating to categories of licenses) before the renewal date in order for the licensee to continue LNG activities. Failure to meet the renewal deadline shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LNG activities authorized by that license.

(1) If a person's license has been expired for fewer than 90 days, the person shall submit a late-filing penalty of one-half the amount of the renewal fee in addition to the required renewal fee. Upon receipt of the renewal fee and late-filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than two years. After verification, if the licensee has met all other requirements for licensing, the commission shall renew the license, and the person may resume LNG activities authorized by the license.

(2) If a person's license has been expired for 90 days but less than one year, the person shall submit a late-filing penalty equal to the amount of the renewal fee in addition to the required renewal fee. Upon receipt of the renewal fee and late-filing penalty, the commission shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the person has met all other requirements for licensing, the commission shall renew the license, and the person may resume LNG activities authorized by the license.

(3) If a person's license has been expired for more than one year, that person may not renew, but shall comply with the requirements for issuance of a new license.

#### *§13.2019. Examination and Course of Instruction.*

(a) This section applies to all licensees and their employees who perform LNG activities, and to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined by this chapter as an LNG transport, including any employee of such ultimate consumer if that employee drives or in any way operates such an LNG transport. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision. Driving a motor vehicle powered by LNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LNG activities.

(1) No individual may work or be employed in any capacity which requires contact with LNG or LNG systems until that individual has submitted to and passed a commission examination measuring the competence of that individual to perform the LNG activities anticipated and the individual's working knowledge of the Texas Natural Resources Code and the *Regulations for Liquefied Natural Gas* related to the type of LNG work anticipated. Table 1 of this section specifies which requirements, indicated with an asterisk, apply to each category of license.

Figure 2: §13.2019(a)(1)

(2) Employees of an ultimate consumer not required to submit to examination under this section shall be properly trained by an individual who passed the examination in the installation, maintenance, and storage of LNG, LNG systems, and vehicles fueled by LNG, and in the operation of equipment during the filling of and dispensing from storage containers. Such training shall also include the protection of containers and equipment against damage or tampering by unauthorized persons.

(3) An individual wishing to submit to examination by the commission shall file LNG Form 2016 with the commission prior to examination. The commission shall notify the individual in writing of acceptance of LNG Form 2016.

(4) When a previously certified individual is hired, the licensee shall notify the commission by filing a properly completed

and signed LNG Form 2016A, which shall be received by the commission or postmarked within ten calendar days of such hiring.

(5) Examinations will be administered in Austin and at other selected sites, unless an applicant demonstrates good cause for administering the examination elsewhere. Good cause includes but is not limited to severe economic hardship.

(6) Successful completion of any required examination shall be credited to the individual.

(7) Any individual who fails an examination is immediately disqualified from performing any LNG activities covered by that examination and shall not retake the same examination for at least 24 hours, unless approved by the assistant director for the LP-Gas Section, Gas Services Division, or another designated commission employee.

(8) Dates and locations of examinations shall be listed in a schedule prepared annually by the commission by September 1st each year. The schedule shall be posted in the Austin office of the Gas Services Division and made available upon request and through electronic media.

(b) Notwithstanding the examination requirements set forth in this section, a licensee may employ an individual as a trainee for a period not to exceed 45 days without that individual having successfully completed the necessary examination, subject to the following conditions:

(1) The trainee shall be directly and individually supervised at all times by an individual who has successfully completed the commission examination for those areas of work being performed by the trainee. Table 1 of subsection (a) of this section specifies the LNG activities which a trainee can perform under direct supervision, but without certification.

(2) The licensee shall file LNG Form 2016 with the commission for each trainee before the trainee begins supervised LNG activities.

(3) A trainee who fails a commission examination shall cease to perform any LNG activities covered by the examination failed. A trainee who has been in training for a total of 45 days in any combination and with any number of employers shall cease to perform any LNG activities for which the trainee is not currently certified.

(4) A licensee who employs an individual in violation of this subsection may be held responsible for the violation. Possible penalties for violation are set forth in the Texas Natural Resources Code, Chapter 116. The commission may call an administrative hearing to show cause why a license should not be subject to revocation, suspension, or probation, or any combination of these penalties.

(c) The applicant shall pay to the commission a \$27 examination fee for management-level examinations and a \$12 fee for employee-level examinations in advance of each required examination. Examination fees are nonrefundable. An applicant who fails an examination shall pay the full examination fee for each subsequent examination.

(d) To renew certified status, an individual who has been qualified by passing an examination shall pay the \$12 annual renewal fee to the commission on or before the renewal deadline.

(1) Failure to meet the renewal deadline shall result in the expiration of certification. If an individual's certification has been expired for more than two years, that individual shall comply with the requirements of subsection (a) of this section. If an individual's certification lapses or expires, that individual shall immediately cease performance of any LNG activities that require certification. An individual may regain certified status only by successfully completing the examination required for the certification and meeting the requirements of paragraph (2) of this section.

(2) Any lapsed or expired renewals submitted after the renewal deadline shall include a \$12 late-filing penalty in addition to the renewal fee and proof of successful completion of the examination required for the certification. Upon receipt of the renewal fee, late-filing penalty, and proof of successful completion of the examination required for the certification, the commission shall verify that the person's certification has not been suspended, revoked, or expired for more than two years. After verification, the commission shall renew the certification and the person may resume LNG activities.

(e) Applicants for license shall attend the applicable courses of instruction as specified in Table 1 of subsection (a) of this section.

(1) The one-hour course of instruction shall be held in Austin and other commission-determined sites around the state.

(2) The Category 35 course of instruction shall be held in Austin or any commission-approved facility at times to be determined by the commission, and shall be a minimum of 32 hours of classroom instruction.

*§13.2022. Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure.*

(a) The commission shall not grant a license or license renewal to an applicant who fails to meet the requirements of §13.2016 of this title (relating to licensing requirements), §13.2019 of this title (relating to examination and course of instruction), §13.2031 of this title (relating to insurance requirements), or §13.2034 of this title (relating to self-insurance requirements).

(1) If the commission determines that an applicant for license or license renewal has not met the requirements of §13.2016 of this title (relating to licensing requirements), §13.2019 of this title (relating to examination and course of instruction), §13.2031 of this title (relating to insurance requirements), or §13.2034 of this title (relating to self-insurance requirements), the commission shall notify the applicant in writing of the reasons for denial. The notice shall advise the applicant:

(A) that the application may be resubmitted within 30 days of receipt of the denial, with all cited deficiencies corrected. If an applicant resubmits the application for license or license renewal within 30 days of receipt of the denial with all deficiencies corrected, the commission shall issue the license or license renewal; or

(B) if the applicant disagrees with the commission's determination, the applicant may request a hearing within 30 days of receiving the notice of denial.

(b) An applicant receiving a notice of denial of a license or license renewal may request a hearing to determine whether the applicant did comply in all respects with the requirements for the category or categories of license sought.

(1) The request for hearing shall be in writing, shall refer to the specific requirements the applicant claims were met, and shall be filed with the division within 30 days of the applicant's receipt of the notification of denial.

(2) Upon receipt of a request complying with paragraph (1) of this subsection, the commission shall schedule a hearing within 30 days following the receipt of the request for hearing to determine the applicant's compliance or noncompliance with the licensing requirements for each category of license sought.

(3) After hearing, the commission shall:

(A) enter an order that the applicant is qualified, granting the licenses for which the applicant is entitled; or

(B) enter an order that the applicant is not qualified, denying the license or license renewal in each category of license sought.

(c) If the commission finds through means including but not limited to inspection, review of documents, or complaint by a member of the general public or any other person, that a license or certificate shall be suspended or revoked because of a probable or actual violation of or noncompliance with Chapter 116 of the Texas Natural Resources Code or the *Regulations for Liquefied Natural Gas*, the commission shall notify the licensee or certified individual in writing of the alleged violation or noncompliance.

(1) The notice shall specify the acts, omissions, or conduct constituting the alleged violation or noncompliance, and shall designate a date at least 30 days but less than 45 days after the licensee or certified individual receives the notice by which the violation or noncompliance shall be corrected or discontinued. If the commission determines the violation or noncompliance may pose imminent peril to the health, safety, or welfare of the general public, the commission may notify the licensee or certified individual orally with instruction to immediately cease the violation or noncompliance. When oral notice is given, the commission shall follow it with written notification no later than five days after the oral notice.

(2) The licensee or certified individual shall either report the correction or discontinuance of the violation or noncompliance within the time frame specified in the notice or request in writing an extension of time in which to comply. The request for extension of the time to comply shall be received by the commission within the same time frame specified in the notice for correction or discontinuance.

(d) If a licensee or certified individual disagrees with the determination of the commission under this section, the licensee or certified individual may request a public hearing on the matter. The hearing shall be conducted in compliance with the Administrative Procedure Act, the General Rules of Practice and Procedure of the Railroad Commission of Texas, and any other applicable rules.

(1) The request for hearing shall be in writing, shall refer to the specific rules or statutes with which the licensee or certified individual claims to have complied, and shall be received by the commission within 30 days of the licensee's or certified individual's receipt of the notice of violation or noncompliance.

(2) If the commission determines that the licensee or certified individual has not complied within the specified time, the commission may enter an order calling a public hearing to be conducted in compliance with the Administrative Procedure Act, the General Rules of Practice and Procedure of the Railroad Commission of Texas, and any other applicable rules.

*§13.2025. Designation of Outlet and Operations Supervisor (Branch Manager).*

(a) The commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the commission in determining the designation of an outlet include but are not limited to:

(1) distance from other LNG activities operated by the licensee;

(2) whether the operation duplicates the primary LNG operation; and

(3) whether the operation is directly supervised on a routine basis.

(b) A licensee maintaining more than one outlet shall file LNG Form 2001A with the commission designating an operations supervisor (branch manager) at each outlet. The operations supervisor shall pass the management examination administered by the commission before commencing or continuing the licensee's operations at the outlet.

(c) An operations supervisor may be a company representative of the licensee; however, an individual may be designated as an operations supervisor at only one outlet.

(d) The operations supervisor shall be directly responsible for actively supervising LNG operations of the licensee at the designated outlet.

*§13.2028. Franchise Tax Certification and Assumed Name Certificates.*

(a) Corporations or limited liability companies applying for an original or renewal license shall file LNG Form 2026 with the commission prior to the issuance of such license certifying that its Texas franchise taxes are either current or are not applicable to the company. An applicant may file a Certificate of Account Status issued by the office of the Comptroller of Public Accounts with the commission as an alternative to filing the LNG Form 2026. Making a false statement as to franchise tax status is grounds for denial, suspension, or revocation of the license granted by the commission.

(b) Any applicant for license shall list all names on LNG Form 2001 under which LNG activities requiring licensing are to be conducted. Any company performing LNG activities under an assumed ("doing business as" or "DBA") name shall file with the commission copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office.

*§13.2031. Insurance Requirements.*

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the commission has adopted the minimum amounts of insurance for LNG licensees authorized by the State of Texas specified in Table 1 of this section. A licensee shall file a valid certificate of insurance before the commission grants or renews a license. Figure 3: 16 TAC §13.2031(a)

(b) Certificates of insurance filed with the commission shall have one of the endorsements specified in Table 1 of subsection (a) of this section attached to the policy. Endorsements may not be cancelled without cancellation of the attached policy.

(c) Each endorsement issued and attached to a certificate of insurance shall require the insurance carrier, noted as "company" on the certificate of insurance, to give the commission 30 days' written notice before the insurance cancellation. The 30-day notice commences from the date the commission receives the notice.

(d) A licensee or applicant for a license that employs or contemplates employing any employees in LNG activities shall file LNG Form 2996A with the commission. A licensee or applicant for a license that does not employ or contemplate employing any employees in LNG activities shall file LNG Form 2996B in lieu of a certificate of workers' compensation, including employers' liability insurance, or alternative accident and health insurance. The licensee or applicant for a license shall file the required insurance certificate and forms with the commission before hiring any employee.

(e) A Category 25 or 35 licensee or applicant for a license or ultimate consumer that operates or contemplates operating a motor vehicle equipped with an LNG transport container shall file LNG Form 2997A with the commission. A Category 25 or 35 licensee or applicant for a license or ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an

LNG transport container or does not transport or contemplate transporting LNG by vehicle in any manner shall file LNG Form 2997B in lieu of a certificate of motor vehicle bodily injury and property damage insurance if this certificate is not otherwise required. The licensee or applicant for a license shall file the required insurance certificate and forms with the commission before operating a motor vehicle equipped with an LNG cargo container or transporting LNG by vehicle in any manner.

(f) A Category 15 licensee or applicant for a license that engages in or contemplates engaging in any LNG operations that would be covered by completed operations and product liability insurance shall file LNG Form 2998A with the commission. A Category 15 licensee or applicant for a license that does not engage in or contemplate engaging in any LNG operations that would be covered by completed operations and product liability insurance shall file LNG Form 2998B in lieu of a certificate of completed operations and product liability insurance. The licensee or applicant for a license shall file the required insurance certificate and forms with the commission before engaging in any operations that require completed operations and product liability insurance.

(g) A licensee or applicant for a license that engages in or contemplates engaging in any operations that would be covered by general liability insurance shall file LNG Form 2998A with the commission. A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance shall file LNG Form 2998B in lieu of a certificate of general liability insurance. The licensee or applicant for a license shall file the required insurance certificate and forms with the commission before engaging in any operations that require general liability insurance.

(h) Notwithstanding the requirements specified in Table 1 of subsection (a) of this section that each licensee carry a policy of workers' compensation insurance, the licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in Texas as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of subsection (a) of this section.

*§13.2034. Self-Insurance Requirements.*

(a) This section applies to a licensee's general liability insurance, including premises and operations coverage. This section shall not apply to worker's compensation insurance, including employer's liability coverage.

(b) A licensee applying for self-insurance shall file LNG Form 2027 with the commission, along with materials which will allow the commission to determine whether:

(1) the net worth of the applicant is adequate in relationship to the size of operations and the extent of its request for self-insurance authority. The applicant shall demonstrate that it will maintain a net worth sufficient to ensure that it will meet its statutory obligations to the public to pay all claims relating to general liability, including premises and operations coverage; and

(2) the applicant has a sound self-insurance program. The applicant shall demonstrate that it has established and shall maintain an insurance program that will protect the public against all claims involving LNG activities to the same extent as the minimum limits specified in Table 1 of §13.2031 of this title (relating to insurance requirements). Such a program may include but not be limited to one or more of the following: reserves; irrevocable letter of credit, as specified in subsection (h) of this section; sinking funds; third-party financial guarantees; parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(c) The commission may consider applications for approval of other securities or agreements, or may require any other information which may be necessary to ensure the application satisfies that the security or agreement offered will afford adequate security for protection of the public.

(d) The commission may approve a licensee's application for self-insurance if the licensee demonstrates to the commission its ability to satisfy its obligations for the minimum insurance requirements specified in §13.2031 of this title (relating to insurance requirements). The commission may approve the licensee as a self-insurer for a specific time period or for an indefinite period until further action is taken by the commission.

(e) The applicant shall file semi-annual reports and annual statements with the applicant's financial status and status of its self-insurance program with the commission during the period of its self-insurer status by March 10 and September 10 of each year.

(f) After ten days' notice to the applicant, the commission may require the applicant to appear and demonstrate that it continues to have adequate financial resources to pay all general liability, including premises and operations coverage, claims, and that it remains in compliance with the other requirements of this section. If the applicant fails to do so, the commission shall revoke its self-insurer status and may order that the licensee is ineligible for self-insurance in the future.

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for workers' compensation coverage or general liability and/or motor vehicle liability insurance by submitting LNG Form 2995 as evidence of self-insurance coverage if permitted by the state workers' compensation act, Texas Civil Statutes, Article 8308-1.01, *et seq*; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and Texas Natural Resources Code, §116.036, by submitting LNG Form 2995 to the commission.

(h) Letters of credit filed with LNG Form 2028 shall:

(1) be issued by a federally chartered and federally insured bank authorized to do business in the United States;

(2) be irrevocable during their terms;

(3) be payable to the commission in part or in full upon demand and receipt from the commission of a notice of forfeiture; and

(4) not apply to the licensing requirements for worker's compensation insurance, including employer's liability coverage.

*§13.2037. Components of LNG Stationary Installations Not Specifically Covered.*

(a) Components of LNG stationary installations which are not specifically covered by the *Regulations for Liquefied Natural Gas* shall not be placed into LNG service until the commission has determined the installation is safe for LNG service. The commission shall apply and require any reasonable sound engineering and safety provisions which the commission may consider necessary to ensure the LNG installation is safe for LNG service. If the affected party disagrees with the commission's determination, the party may request a hearing as described in §13.2022 of this title (relating to denial, suspension, or revocation of licenses or certifications, and hearing procedure). However, the installation shall not be placed into LNG operation until the commission has approved the installation as safe for LNG service.

(b) The commission shall not grant tentative approval for plans and specifications required by subsection (b) of §13.2040 of this title (relating to filings and notice requirements for stationary LNG installations) submitted with an application for a Category 45 license until all other licensing requirements have been met.

*§13.2040. Filings and Notice Requirements for Stationary LNG Installations.*

(a) LNG shall not be introduced into any LNG container unless that container is installed in accordance with the statutes of the State of Texas and with the *Regulations for Liquefied Natural Gas* in effect at the time of installation.

(b) Prior to an installation which would result in an aggregate water capacity of 15,540 gallons or more, the applicant shall submit LNG Form 2500 to the commission including plans and specifications for the installation.

(1) Plans and specifications shall be sealed by a registered professional engineer licensed to practice in the State of Texas.

(2) Plans and specifications shall include fire protection which complies with §13.2131 of this title (relating to fire protection).

(3) If any modifications are made to the plans and specifications before tentative or interim approval is granted by the commission, they shall be resealed by a registered professional engineer licensed to practice in the State of Texas and resubmitted to the commission.

(c) Prior to the installation of a single LNG container with a water capacity of 15,540 to 46,620 gallons, the applicant or licensee shall notify all adjoining property owners within 500 feet of the container's location.

(1) When the size of the container is 46,621 to 93,240 gallons, the notice area shall increase to 750 feet.

(2) When the size of the container is 93,241 gallons or more, the notice area shall be 900 feet, and the applicant or licensee shall publish a notice of the proposed installation in a local newspaper with general circulation for three consecutive days of publication. In addition, a representative of the LP-Gas Section of the Railroad Commission shall inspect the site.

(3) The notice shall be mailed to the adjoining property owners simultaneously with the filing of the required forms and plans and specifications with the commission. The notice shall be accomplished by certified mail, return receipt requested. The applicant or licensee shall retain the return receipts for commission review, if requested.

(4) The newspaper public notice, if required, shall contain at least the following information: the applicant's name, address, phone number, contact person's name, the street address or physical description of the location of the proposed installation, and a statement informing the public on how to get more information concerning the proposed installation. The notice shall also include a statement that the application is currently pending before the Railroad Commission's LP-Gas Section.

(5) Objections shall be filed with the commission within 18 days of the postmarked date on the notice letter. If the commission finds that the objection is not proper, the commission shall notify the property owner and the property owner shall have ten days from the date of the commission's postmarked letter to correct the objection. If one or more of the adjoining property owners files an objection and a written request for a hearing with the commission, the hearing shall be conducted as soon as possible and a recommendation presented to the commission within 90 days following the hearing. When possible, the hearing shall be held in a location near the proposed site.

(6) Temporary installations which are used during peak demand times such as during cold weather or emergencies are not required to comply with these notice requirements. However, a sign should be installed at the site and brochures or other similar means of notification shall be available at the site to advise the public of the need and use for the temporary installation.

(d) Prior to the installation of more than one LNG container at a facility, or the addition of one or more containers at an existing single-tank facility, the applicant or licensee shall notify all adjoining property owners within the distances specified in subsection (c) of this section. To determine the equivalent volume for a multi-container facility, and therefore which distance to use, the following formula shall be used: Equivalent volume = Single largest tank volume x +/- number of tanks

(e) The commission shall grant tentative or interim approval prior to the setting of the LNG container and construction of the LNG installation.

(f) When an LNG container is replaced with a container of the same or less overall diameter and length or height, and installed in the identical location of the existing container at an LNG storage installation of 15,540 gallons aggregate water capacity or more, the applicant shall file LNG Form 2501 with the commission.

(1) LNG Form 2500, LNG Form 2500A, and LNG Form 2501, including plans and specifications, are not required to be filed prior to installation of bulkheads, pull-away devices, or emergency shutoff valves (ESV's), or when maintenance and improvements are being performed to the piping system at existing previously approved LNG installations having an aggregate water capacity of 15,540 gallons or more.

(2) A nonrefundable fee of \$27 shall be submitted with each LNG Form 2500. A nonrefundable resubmission fee of \$17 shall be included with each incomplete or revised set of plans and specifications resubmitted.

(3) The proposed installation shall not be operated or used in LNG service until approved by the commission.

(g) Upon completion of a commercial installation having an aggregate water capacity of less than 15,540 gallons, the applicant shall submit LNG Form 2501, postmarked or physically delivered to the commission, within ten calendar days after completion of such installation. LNG Form 2501 shall state that:

- (1) the installation complies with the statutes and *Regulations for Liquefied Natural Gas*;
- (2) any necessary LNG licenses have been issued; and
- (3) the installation has been placed in LNG service.

(h) If a licensee violates the provisions of this section, the commission may require the licensee to submit LNG Form 2500 and plans and specifications for future LNG installations. The commission shall notify the licensee in writing of this requirement. If the licensee disagrees with the determination of the commission, then that licensee may request a public hearing on the matter as described in §13.2022 of this title (relating to denial, suspension, or revocation of licenses or certifications, and hearing procedure). Until the commission issues a decision subsequent to a hearing on the matter, the licensee shall be required to submit plans and specifications as noted previously.

(i) A nonrefundable fee of \$7 for each LNG container listed on LNG Form 2501 shall be submitted with each LNG Form 2501 required to be filed by the applicable subsections of this section. A nonrefundable resubmission fee of \$12 shall be included for each LNG Form 2501 resubmitted.

(j) The commission shall review all applications within 21 calendar days of their receipt and shall mail to the applicant within

21 calendar days written notice of whether the application is complete or incomplete.

(k) When the commission notifies an applicant of an incomplete LNG Form 2500 or LNG Form 2500A, the applicant has 120 calendar days from the date of the notification letter to resubmit the corrected application or the application will expire. After 120 days, the applicant shall file a new application to reactivate commission review of the proposed installation.

(1) The applicant may request in writing an extension of the 120-day time period. The request shall be postmarked or physically delivered to the commission before the expiration date. The commission may extend the application period for up to an additional 90 days.

(2) If the tentatively approved installation is not completed within one year from the date tentative approval was granted, the application will expire. Prior to the date of expiration, the applicant may request in writing an extension of time of up to 90 days to complete the installation. If the applicant fails to request an extension of time within the time period prescribed in this subsection, the applicant will be required to submit a new application before the original installation can be completed.

(3) Prior to the installation of an LNG container referenced in this section in a heavily populated or congested area, the commission shall determine whether the proposed installation poses a threat to the health, safety, and welfare of the general public. The commission shall determine restrictions on LNG container capacities in accordance with the following:

(A) density of the population within 500 feet of the LNG installation;

(B) nature of the land use on those pieces of property located within 500 feet of the LNG installation;

(C) vehicular traffic in the area;

(D) types and numbers of roadways in the area;

(E) type of operations on the premises;

(F) potential sources of ignition in the area;

(G) existence of dangerous or combustible materials in the area that might be affected in an emergency situation;

(H) the number of members of the general public who are concentrated in the area; and

(I) other factors related to the public health, safety, and welfare.

(4) If the commission declines to administratively approve the installation, the commission shall notify the applicant in writing within 21 calendar days. The applicant may modify the submission and resubmit it for approval, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(l) The commission shall examine all drawings, plans, reports, and specifications required by commission regulation to be submitted for approval to determine whether the design, manufacture, construction, or use of the depicted item, system, operations, procedure, or installation complies with the *Regulations for Lique-*

ried Natural Gas. The commission shall also determine whether the subject of the submission poses a threat to the health, safety, and welfare of the general public.

(1) If the commission declines to approve administratively the submission, the commission shall notify the applicant of this decision in writing within 21 calendar days. The applicant may modify the submission and resubmit it for approval within 21 calendar days after receiving the notice, or may request a hearing to be conducted in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas. The subject of the submission shall not be operated or used in LNG service in this state until approved by the commission following a hearing.

(2) LNG Form 2005, LNG Form 2008, and any other documentation pertinent to the installation may be requested by the commission in order to further determine compliance with the *Regulations for Liquefied Natural Gas*.

#### §13.2043. Temporary Installations.

(a) Temporary installations shall comply with the following requirements:

(1) Prior to the completion of a temporary installation with an individual or aggregate water capacity of 15,540 gallons or less, the licensee or non-licensee shall file LNG Form 2501, including proof of the local fire marshal's approval if the installation is within such jurisdiction.

(2) Prior to the completion of a temporary installation with an individual or aggregate water capacity of 15,541 gallons or more, the licensee or non-licensee shall file LNG Form 2500, including plans and specifications, and proof of the local fire marshal's approval if the installation is with such jurisdiction.

(b) Temporary installations shall be limited to one year. If the temporary installation needs to remain in service for more than one year, the licensee or nonlicensee responsible for the temporary installation shall inform the commission of this extension of time at least 30 days prior to the expiration of the one-year period.

(c) Temporary installations shall be protected by guardrailing as specified in §13.2101(f) of this title (relating to uniform protection standards).

(d) Temporary installations shall comply with the electrical requirements specified in subchapter K of this title (relating to instrumentation and electrical services).

(e) Temporary installations shall be mounted on a secure surface, not to include bare earth.

(f) Temporary installations are not required to have impounding areas.

(g) The commission may inspect temporary installations for compliance with these requirements.

#### §13.2046. Filings Required for School Bus, Mass Transit, and Special Transit Vehicles.

(a) An original school bus, mass transit or special transit vehicle manufacturer shall submit LNG Form 2503 for the model of vehicle to be equipped with an LNG system prior to the vehicle being used in LNG service in this state.

(b) An applicant for license or a licensee converting a school bus, mass transit or special transit vehicle to LNG shall submit LNG Form 2503 to the commission prior to the conversion.

(c) The commission shall examine all drawings, plans, reports, and specifications for mobile installations required to be submitted for tentative approval to determine whether the design, manufacture, construction, or use of the depicted item, system,

operations, procedure, or installation complies with the *Regulations for Liquefied Natural Gas*. The commission shall also determine whether the subject of the submission poses a threat to the health, safety, and welfare of the general public.

(d) The commission shall review all applications within 21 calendar days of receipt and shall mail to the applicant within 21 calendar days written notice of whether the application is complete or incomplete. An application is not complete until the applicant has received written notice.

(1) If the commission finds that the application complies with the LNG rules, the commission shall return the application to the applicant, and state that the LNG converted vehicles may be placed immediately into LNG service upon completion of the LNG systems.

(2) If the commission declines to approve administratively the submission, the commission shall notify the applicant in writing of this decision within 21 calendar days. The applicant may request a hearing on the matter as described in §13.2022 of this title (relating to denial, suspension, or revocation of licenses or certifications, and hearing procedure) . The subject of the submission shall not be operated or used in LNG service in this state until approved by the commission following a hearing.

(3) If the commission finds that corrections are required, the applicant may make the corrections and resubmit the application for review by the commission in accordance with the process described in this section. When an applicant is notified of a rejected LNG Form 2503, the applicant has 120 calendar days from the date of the notification letter to resubmit the application with the discrepancies corrected or the original application will expire.

(4) The commission may at any time require an inspection of any LNG converted vehicle system, including prior to the LNG system being placed into service. The applicant shall notify the commission in writing that a school bus, mass transit, or special transit vehicle installation is completed and ready for inspection.

(5) If the commission determines that the completed installation or conversion varies materially from the application originally accepted by the commission the applicant shall correct any variances and notify the commission of the corrections, or resubmit the application. The commission will follow the same procedures described in this section to review resubmitted applications.

(6) Any subsequent conversions to an LNG system by the same applicant will not require resubmission of LNG Form 2503 provided the conversions are made in accordance with the application originally accepted as in compliance. However, LNG Form 2504 shall be filed with and approved by the commission prior to the completion of any subsequent school bus, mass transit, or special transit vehicle conversion. The applicant shall notify the commission in writing when subsequent conversion is completed and ready for inspection. Subsequent conversions that differ materially from the initial application originally accepted by the commission will require another submission of LNG Form 2503. Original school bus, mass transit, or special transit vehicle manufacturers shall submit LNG Form 2504 prior to the vehicles being used in this state.

#### §13.2049. Report of LNG Incident/Accident.

(a) If an incident or accident occurs during transport, as a result of a pullaway, or where LNG is or is suspected to be the cause, the licensee or nonlicensee owning, operating, or servicing the installation shall notify the division by telephone as soon as possible after the licensee or nonlicensee has knowledge of the incident or accident if any of the following occurs:

(1) a spill of 25 gallons or more of LNG;

- (2) property damage of \$1,000 or greater; or
- (3) an injury requiring transport to a medical facility.

(b) Any transport unit required to be registered with the commission in accordance with §13.2704 of this title (relating to registration of LNG transports) which is involved in an accident where there is damage to the tank, piping appurtenances, or any release of LNG resulting from the accident shall be reported to the commission, regardless of the accident location. Any LNG-powered motor vehicle used for school transportation or mass transit, including any state-owned vehicle, which is involved in an accident resulting in a release of LNG or damage to LNG equipment shall be reported to the commission, regardless of the accident location.

(c) The telephone notification shall include the following information:

- (1) the date and time of the incident or accident;
- (2) type of structure or equipment involved;
- (3) resident's or operator's name;
- (4) physical location;
- (5) number and type of injuries or fatalities;
- (6) whether fire, explosion, or leak has occurred;
- (7) whether LNG is currently leaking; and
- (8) whether immediate assistance from the division is requested.

(d) The individual making the telephone notification shall leave his or her name and telephone number.

(e) Following the initial telephone report of any of the incidents or accidents described in this section, the licensee shall file LNG Form 2020 with the division. The form shall be postmarked within 14 calendar days of the date of initial notification to the division.

*§13.2052. Application for an Exception to a Safety Rule.*

(a) Any person may apply for an exception to the provisions of this chapter by filing an application for exception with the commission using LNG Form 2025.

(b) In lieu of LNG Form 2025, the application or pleading shall be typewritten on paper not to exceed 8 1/2 by 11 inches and have an inside margin of at least one inch. Any attached exhibits shall be folded to the same size as the pleading itself. The text shall be double-spaced and appear on one side of the paper only.

(c) The application shall contain the following information:

- (1) the section number of the rule for which the exception is being requested;
- (2) the type of relief desired, including the exception requested and information which may assist the commission in comprehending the requested exception;
- (3) a concise statement of facts which support the applicant's request for the exception, such as the reason for the exception, the safety aspects of the exception, and the social or economic impact of the exception;
- (4) for stationary installations, a description of the acreage and/or address upon which the subject of the exception will be located. The description shall be in writing and shall include the following:
  - (A) a plat drawing;

(B) sufficient identification of the site so that determination of property boundaries can be made;

(C) the ownership of the land; and

(D) the legal authority under which the applicant, if not the owner, is permitted occupancy.

(5) the name, business address, and telephone number of the applicant and of the authorized agent, if any;

(6) an original signature in ink by the applicant filing the application or by the applicant's authorized representative; and

(7) a list of the names and addresses of all affected persons as defined in subsection (d) of this section.

(d) Notice of the application for an exception to a safety rule shall include the following items and procedures:

(1) The applicant shall send a copy of the application by certified mail, return receipt requested, to all affected persons on the same date on which the application is filed with or sent to the commission. Return receipts shall be forwarded to the commission. The application shall include, in addition to the other requirements, a notice to the affected persons that any objection shall be filed with the commission within 18 days of the postmarked date of the certified mail.

(2) If an exception is requested for a stationary site, affected persons to whom the applicant shall give notice shall include but not be limited to:

(A) persons and businesses owning or occupying property adjacent to the site;

(B) the city council, if the site is within municipal limits; and

(C) the county commission, if the site is outside municipal limits.

(3) If an exception is requested for a nonstationary installation, affected persons to whom the applicant shall give notice shall include but not be limited to:

(A) the Texas Department of Public Safety; and

(B) all processed gas loading and unloading facilities used by the applicant.

(4) The commission may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection if doing so will not prejudice the rights of any person.

(e) The commission shall review the application within 21 calendar days of receipt of the application. If the commission does not receive any objections from any affected persons as defined in subsection (d) of this section, the commission may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the commission declines to grant administratively the exception, the applicant shall be notified of the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(f) A hearing shall be held when the commission receives objections from any affected party, or when the applicant requests one following an administrative denial. To be granted a hearing, the applicant shall file a request for hearing within 14 days of receiving notice of the administrative denial. Hearings will be held in accordance with the requirements of the Administrative Procedure Act and the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(g) The commission shall prepare a notice of hearing which shall be mailed to the applicant and all affected persons by certified mail, return receipt requested, at least 21 days prior to the date of the hearing.

(h) Intentional misinformation submitted by an applicant or the authorized agent of such applicant shall be punishable as set out in Texas Natural Resources Code, §91.143, and may be grounds for the commission to dismiss an application, with or without a hearing, and with prejudice.

(i) After hearing, the commission may grant exceptions to this chapter if the commission determines that granting the exception will neither imperil nor tend to imperil the health, safety, or welfare of the general public.

(j) or good cause shown, the commission may grant a temporary exception of 30 days or less to the examination requirements for representatives and operations supervisors. Good cause includes but is not limited to death of a sole proprietor or partner, or severe economic hardship. Applicants for temporary exceptions shall comply with applicable safety requirements and shall furnish the commission with evidence that granting the exception will neither create a safety hazard nor endanger the public.

(k) A request for an exception that is inactive for six months after the applicant has been notified by the commission of its deficiencies shall expire.

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 26, 1996.

TRD-9604224 Mary Ross McDonald  
Assistant Director, Office of General Counsel, Gas  
Services Section  
Railroad Commission of Texas

Proposed date of adoption: June 11, 1996

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

◆ ◆ ◆  
Subchapter H. General Rules for all Stationary  
LNG Installations

- 16 TAC §§13.2101, 13.2104, 13.2107, 13.2110,  
13.2113, 13. 2116, 13.2119, 13.2122, 13.2125,  
13.2128, 13.2131, 13.2134, 13.2137, 13.2140

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

§13.2101. *Uniform Protection Requirements.*

(a) This section applies to the protection from tampering and damage of stationary LNG installations, including LNG transfer systems, dispensing systems, and storage containers.

(b) Protection shall be maintained in good condition at all times in accordance with the standards set forth in this subsection. The commission may impose additional requirements to ensure the safety of personnel and the general public.

(c) Stationary LNG installations shall be protected from tampering and damage by either fencing or guardrails, or a combination of both as specified in this section. The operating end of the container, including the material handling equipment and the entire dispensing system, and any part of the LNG transfer system, dispensing system, or storage container which is exposed to vehicular traffic shall be protected from damage by the vehicular traffic to which it is normally exposed. The protection shall extend at least 24 inches beyond any part of the LNG transfer system, dispensing system, or storage container.

(d) Stationary LNG installations may use fencing which is located more than 25 feet from any point of the LNG transfer system, dispensing system, or storage containers. If such perimeter fencing is used, the LNG transfer system, dispensing system, or storage containers shall also be protected from the normal vehicular traffic to which they are subjected by guardrails at the operating end of the equipment, including all material handling equipment. Guardrails shall be located at least 24 inches beyond any part of the protected equipment which is exposed to vehicular traffic.

(e) Fencing at LNG stationary installations shall comply with the following:

(1) Fencing material shall be solid construction of non-combustible material or chain link with wire at least 12 1/2 American wire gauge in size.

(2) Fencing shall be at least six feet in height at all points. Fencing may be five feet in height when topped with at least three strands of barbed wire, with the strands four inches apart.

(3) Uprights, braces, and cornerposts shall be composed of noncombustible material if located within the minimum distances specified for sources of ignition or combustible materials set forth in §13.2110 of this title (relating to LNG container installation distance requirements) for the enclosed LNG transfer system, dispensing system, or LNG containers.

(4) A minimum clearance of 24 inches shall be maintained between the fencing and any part of an LNG transfer system, dispensing system, or storage container that is part of a stationary installation.

(f) Guardrails at LNG stationary installations shall comply with the following:

(1) Vertical supports for guardrails shall be at least four-inch concrete-filled schedule 40 steel pipe or material of equal or greater strength. The vertical supports shall be capped on top, anchored in concrete at least 36 inches below the ground, and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

(2) The top of the horizontal guardrail shall be secured to the vertical supports at least 30 inches above the ground. The horizontal guardrail shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrail shall be welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions including the nature of the traffic to which the protected equipment is exposed.

(3) Openings in the horizontal guardrail shall not exceed 36 inches. A means of temporarily removing the horizontal guardrail and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrail and vertical supports. In no case shall the protection provided by the horizontal guardrail and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only over the horizontal guardrail or through the 45-degree opening in front of the bulkhead.



(4) A minimum clearance of 24 inches shall be maintained between the railing and any part of an LNG transfer system, dispensing system, or storage container.

(g) Stationary LNG installations shall comply with the sign and lettering requirements specified in Table 1 of this section and the following:

(1) Unless colors are specified, lettering shall be a color in sharp contrast to the background color of the sign and shall be easily readable.

(2) Signs shall be visible from each point of transfer;

(3) Signs on emergency shutdown devices shall be permanently affixed;

(4) Signs bearing the words, "NATURAL GAS," shall be located on all operating sides of dispensers; and

(5) Signs indicating the licensee's name shall be located at either the vehicle dispenser or refueling area, or at the loading or unloading area.

Figure 4: 16 TAC §13.2101(g)(5)

(h) Monitoring sensors shall be installed at all stationary installations to detect hazardous levels of LNG. The presence of LNG is considered hazardous when it reaches one-fifth of the LFL. If the level exceeds one-fifth of the LFL, the sensor shall either shut the system down or sound an alarm. The number of sensors to be installed shall comply with the manufacturer's instructions regarding the area of coverage for each sensor and the size of the installation. The sensors shall be installed and maintained in accordance with the manufacturer's instructions.

#### §13.2104. Uniform Safety Requirements.

(a) In order to determine the safety of a container, the commission may request the manufacturer's data report on that container. The commission may also request that containers and assemblies be examined by a Category 50 licensee equipped for and experienced in the testing of LNG containers and equipment. The Category 50 licensee shall file a comprehensive report on its findings with the commission. This requirement may be applied even though an acceptable LNG Form 2023 is on file at the commission.

(b) Any stationary LNG container previously in LNG service which has not been subject to continuous LNG pressure or inert gas pressure shall be inspected by an API 510 inspector to determine if the container shall be leak-tested or recertified. A copy of the inspector's written report shall be filed with the commission. The container shall not be used until the commission grants approval.

(c) Any stationary LNG container which has been subject to continuous LNG or inert gas pressure need not be tested prior to installation provided an acceptable LNG Form 2023 is filed with the commission when LNG Form 2500 is submitted for any facility requiring submission of plans and specifications.

(d) When installed for use, containers shall not be stacked one upon another except when designed by the manufacturer for stacking.

#### §13.2107. Stationary LNG Storage Containers.

(a) Used LNG containers shall meet the requirements of §13.2104 of this title (relating to uniform safety requirements) and any other applicable rules prior to being reused in LNG service.

(b) ASME, DOT and API containers shall be identified by attachment of a stainless steel nameplate in a location that will remain visible after the container is installed and by a method which will minimize corrosion of the nameplate, its means of attachment, and the container. The nameplate shall be marked with the following information:

(1) manufacturer's name and date of construction of container;

(2) nominal liquid capacity (in barrels or gallons);

(3) design pressure (in psig) for methane gas at the top of the container;

(4) maximum permissible density of liquid to be stored;

(5) maximum level to which container may be filled with stored liquid;

(6) maximum level to which container may be filled with water for test, if applicable; and

(7) minimum temperature in degrees Fahrenheit for which the container was designed.

(c) Openings on storage containers shall be marked with a sign or tag showing the function of the opening. The markings shall remain readable during all operating conditions and shall be located to minimize the effects of possible frosting.

(d) Shop-fabricated and shop-tested LNG containers shall be leak-tested to 90% of the pressure relief valve setting after being installed and filled with LNG.

#### §13.2110. LNG Container Installation Distance Requirements.

(a) LNG containers shall be installed in accordance with the following minimum distance requirements from the edge of the container or the impoundment area:

(1) Containers with aggregate water capacities up to 15,540 gallons shall be located at least 25 feet from any building, property line, stationary source of ignition, or other flammable liquids;

(2) Containers with aggregate water capacities from 15,541 to 93,240 gallons shall be located at least 50 feet from any building, property line, stationary source of ignition, or other flammable liquids;

(3) Containers with aggregate water capacities of 93,241 gallons or more shall be located at a distance approved by the commission through its review of the required plans and specifications. The commission may refer to any nationally recognized standards in making its determination relating to the required distance.

(b) Operating industrial trucks with only one container mounted on each truck may be stored inside buildings. Extra containers shall not be stored inside buildings. Operating industrial trucks shall be stored in an area that will reduce the likelihood of an accident. Service valves shall be closed whenever a truck with a mounted container is stored. A venting system shall be used any time a vehicle not in operation is inside a building to allow safe relief valve venting.

(c) Stationary LNG containers and piping shall not be placed in the area directly beneath or above an electric transmission, distribution, or customer service line and the area six feet to either side of that line. If this distance is not adequate to prevent the line and the associated voltage from contacting the LNG container in the event of breakage of any conductor, then other suitable means of protection designed and constructed to prevent such contact with the container may be used if approval is received from the commission. The request for approval shall be in writing and shall specify the manner in which the container will be protected from contact, including specifications for the materials to be used. If the commission does not approve the proposed protection, then the container shall be located a sufficient distance from the line to prevent such contact.

*§13.2113. Maintenance Tanks.*

(a) Stationary installations which include vehicle maintenance areas may have a container permanently installed outside the maintenance area to remove LNG from a vehicle if the removal of the LNG is necessary to perform maintenance or repairs. The container shall comply with the following requirements:

(1) The container shall have a maximum water capacity of 200 gallons; and

(2) The transfer of LNG from the vehicle into the maintenance container shall take place outside any building.

(b) The container mounted on the mobile refueling vehicle described in §13.2307 of this title (relating to indoor fueling) may be used to store fuel from a vehicle requiring maintenance provided both the mobile refueling vehicle and the vehicle requiring maintenance are outside any building during the transfer of fuel.

*§13.2116. Transfer of LNG.*

(a) Venting of LNG is prohibited, except for the following:

(1) as provided for in §13.2119 of this title (relating to transport vehicle loading and unloading facilities and procedures); and

(2) through a trycock installed on a stationary storage tank during filling of the tank.

(b) LNG being transferred into stationary storage containers shall be compatible in composition or temperature and density with the LNG already in the container. When making transfers into fueling facility containers, the LNG shall be transferred at a pressure that will not exceed the set pressure of the pressure relief device.

(c) When the composition or temperature and density are not compatible, measures shall be taken to prevent an excessive rate of vapor evolution.

(d) At least one licensed or certified individual shall be in attendance while unloading is in progress.

(e) Sources of ignition shall not be permitted within 25 feet of the transfer area or within the distances specified as classified areas in Table 1 of §13.2513 of this title (relating to electrical equipment) while transfer of LNG is in progress.

(f) Measuring instruments shall be provided to determine that containers are not overfilled.

*§13.2119. Transport Vehicle Loading and Unloading Facilities and Procedures.*

(a) Transport vehicle loading and unloading facilities shall meet the following requirements:

(1) Rack structures shall be constructed of noncombustible material such as steel or concrete.

(2) Transfer piping, pumps, and compressors shall be installed with the following protective measures:

(A) protection from damage from vehicle movements in compliance with the guardrail and fencing requirements of §13.2101 of this title (relating to uniform protection requirements);

(B) isolation valves at both ends of containers with less than 2,000 gallon capacity, and a remote operating valve, automatic closure, or check valve to prevent backflow on containers of 2,000 gallons or more capacity;

(C) isolation valving and bleed connections to depressurize hoses and arms and minimize venting before disconnecting;

(D) hoses and arms equipped with a shutoff valve at the free end;

(E) a check valve on piping for liquid transfer to minimize accidental release; and

(F) a line relief valve between every pair of isolation valves.

(3) Where multiple products are loaded or unloaded at the same location, loading arms, hoses, and manifolds shall be marked to indicate the product or products handled by each system.

(4) Operating status indicators shall be provided in the transfer area.

(b) Written procedures covering normal transfer and emergency operating procedures shall be available for all transfer operations. The procedures shall be kept current and available to all employees engaged in transfer operations.

(c) Prior to beginning transfer operations, the following checks shall be made:

(1) Gauge readings shall be obtained or inventory established to prevent overfilling of the receiving vessel.

(2) Transfer connections shall be checked to ensure they are gastight and liquidtight.

(3) Unless required for transfer operations, LNG or flammable liquid transport vehicle engines shall be turned off. Brakes shall be set and wheels chocked to prevent movement of the vehicle prior to connecting for transfer. The engine shall not be started until the transport vehicle has been disconnected and any released vapors have dissipated.

(4) Prior to loading LNG into a transport vehicle tank which does not have a positive pressure or is not in exclusive LNG service, a test shall be made to determine the oxygen content in the receiving container. If the oxygen content in either case exceeds 1.0% by volume, the container shall not be loaded until suitably purged.

(5) An LNG transport vehicle shall be positioned prior to transfer so that it can exit the area without backing when the transfer operation is complete.

(d) During transfer operations, the following checks shall be made:

(1) Levels shall be checked during the transfer operations.

(2) Pressure and temperature conditions shall be observed during the transfer operations. If any unusual variance in pressure occurs, transfer shall be stopped until the cause has been determined and corrected.

(e) No repair shall be performed on the transfer system while transfer is taking place.

*§13.2122. Transfer Systems, Including Piping, Pumps, and Compressors, Used for LNG and Refrigerants.*

(a) Transfer systems and pumps used for transfer of LNG and refrigerants shall be provided with suitable means for precooling to reduce the effect of thermal shock and overpressure.

(b) Check valves shall be provided as required to prevent backflow in transfer systems and shall be located as close as practicable to the point of connection to any system from which backflow might occur.

(c) In addition to a locally mounted device to shut down the pump or compressor drive, a readily accessible, remotely located device shall be provided at least 25 feet away from the equipment to shut down the pump or compressor in case of emergency. The device shall be marked in accordance with §13.2101(i) of this title (relating to uniform protection requirements). Remotely located pumps and compressors used for loading or unloading tank vehicles shall be provided with shut-down controls at the transfer area and at the pump or compressor site.

(d) Pressure gauges shall be installed on each pump and compressor discharge.

(e) Valves shall be installed so that each pump or compressor can be isolated for maintenance. Where pumps or centrifugal compressors are installed for operation in parallel, each discharge line shall be equipped with a check valve.

(f) Pumps and compressors shall be provided with pressure relief devices to limit the discharge pressure to their maximum allowable working pressure.

#### *§13.2125. Hoses and Arms.*

(a) Hoses and arms used for transfer shall be suitable for the temperature and pressure of the operating conditions. Hoses shall be designed to have a bursting pressure of at least five times the maximum allowable working pressure.

(b) Loading hoses or arms shall be supported to prevent displacement of the hoses and arms that results in greater stresses than those allowed in Appendix A of ANSI B31.3.

(c) Couplings used for connection of a hose or arm shall be suitable for operating conditions and shall be designed for frequent coupling and uncoupling.

(d) Hoses shall be tested at least annually to the setting of the relief valve that protects the hose.

(e) Hoses shall be visually inspected for damage or defects before each use and shall not be used if any damage or defect is found.

#### *§13.2128. Communications and Lighting.*

(a) Emergency communications shall be provided near transfer locations so that the operator can contact remotely located personnel who are associated with the transfer operations.

(b) Transfer areas shall be illuminated during hours of darkness.

#### *§13.2131. Fire Protection.*

(a) Fire protection shall be provided for all LNG facilities, as determined by sound fire protection engineering principles, analysis of local conditions, hazards within the facility, and exposure to or from other property. The evaluation shall determine at a minimum type, quantity, and location of:

(1) equipment necessary for the detection and control of fires, leaks, and spills of LNG, flammable refrigerants, or flammable gases;

(2) equipment necessary for the detection and control of potential non-process and electrical fires;

(3) the methods necessary for protection of the equipment and structures from the effects of fire;

(4) fire protection water systems;

(5) fire extinguishing and other fire control equipment;

(6) the availability and duties of employees and the availability of local emergency response organizations during an emergency; and

(7) the protective equipment and special training needed by employees for their emergency duties.

(b) A detailed emergency response manual shall be prepared for potential emergency conditions. The procedures shall include but not be limited to:

(1) shut-down or isolation of all or part of the equipment to ensure that the escape of gas or liquid is promptly stopped or reduced as much as possible;

(2) use of fire protection equipment;

(3) notification of emergency response organizations and public authorities;

(4) first aid; and

(5) duties of employees.

(c) The emergency procedure manual shall be available in the operating area and shall be updated as required by changes in equipment or procedures.

(d) Employees shall be trained in emergency duties and procedures. Refresher training shall be conducted at least once every two years.

(e) Fire control measures shall be coordinated with the local fire and emergency response organizations.

(f) Safety and fire protection equipment shall be visually inspected at least once a month and tested at least once a year. Documentation shall be maintained on inspections and tests.

(g) Maintenance on fire control equipment shall be scheduled so that a minimum of equipment is out of service at any one time and fire protection safety is not compromised. Access routes for movement of fire control equipment to an LNG fueling facility shall be maintained at all times.

(h) Fire extinguishing and other fire control systems shall be appropriate for the protection of specific hazards.

(i) Dry chemical fire extinguishers suitable for extinguishing gas fires shall be provided at each stationary LNG installation.

#### *§13.2134. Container Purging Procedures.*

(a) Only experienced and qualified personnel shall be responsible for container purging procedures.

(b) Prior to placing an LNG container into service, the air shall be displaced by an acceptable inerting procedure as described in American Gas Association *Purging Principles and Practice*, 1975 edition.

(c) Prior to taking a container out of service, the natural gas in the container shall be purged by an acceptable inerting procedure.

(d) The oxygen content of the container during purging operations shall be determined by an acceptable oxygen analyzer.

#### *§13.2137. Employee Safety and Training.*

(a) Employees shall be advised of the hazards relative to LNG facility operations.

(b) Protective clothing and equipment shall be provided to employees for both normal operations and emergency response.

(c) Self-contained breathing apparatus shall be provided for those employees who may be required to enter a hazardous atmosphere during an emergency.

(d) Employees who handle and dispense LNG shall be trained in proper handling, operating duties, and procedures.

(e) Employees shall be trained upon employment and as needed thereafter, but no less than every two years. Training shall include the following:

- (1) information on the nature, properties, and hazards of LNG in both the liquid and gaseous phases;
- (2) specific instructions on the facility equipment to be used;
- (3) use and care of protective equipment and clothing;
- (4) standard first aid;
- (5) response to emergency situations such as fire, leaks, and spills;
- (6) good housekeeping practices;
- (7) the emergency response plan; and
- (8) evacuation and fire drills.

(f) Licensees shall retain employee safety training records for the past four years.

*§13.2140. Inspection and Maintenance.*

(a) Licensees shall have a preventive maintenance program in place which includes a schedule of written procedures for regular testing and inspection of facility systems and equipment.

(b) Components and their related support systems shall be maintained in a condition that is compatible with their operation or safety purpose by repair, replacement, or other means.

(c) If a safety device is taken out of service for maintenance, the component served by the device shall also be taken out of service unless the same safety function is provided by an alternate means.

(d) If the inadvertent operation of a component taken out of service could cause a hazardous condition, that component shall have a weather-resistant tag attached to the controls with the words, "DO NOT OPERATE, " or similar notice.

(e) The operations supervisor shall retain permanent records of dates and maintenance activities performed.

(f) Welding, cutting, and similar operations shall be prohibited within 25 feet of the container and the transfer area during transfer operations and shall be conducted only as specifically authorized in a manner to prevent accidental ignition of LNG or flammable fluids.

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 26, 1996.

TRD-9604225      Mary Ross McDonald  
Assistant Director, Gas Services Section, Office of  
General Counsel  
Railroad Commission of Texas

Proposed date of adoption: June 11, 1996

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



## Subchapter J. General Rules for LNG Fueling Facilities

- **16 TAC §§13.2301, 13.2304, 13.2307, 13.2310, 13.2313, 13. 2316, 13.2319, 13.2322, 13.2325, 13.2328**

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

*§13.2301. Applicability.* This subchapter applies to the design, construction, installation, and operation of containers, pressure vessels, pumps, vaporization equipment, buildings, structures, and associated equipment used for the storage and dispensing of LNG as an engine fuel for vehicles of all types.

*§13.2304. General Facility Design.*

(a) LNG fueling facilities shall be designed with provisions for securing all equipment in accordance with §13.2101 of this title (relating to uniform protection requirements).

(b) Structures and support of LNG fueling facility equipment, piping, controls, and tanks shall be constructed of noncombustible material.

(c) Dikes, grading, or diversion curbs shall be provided to prevent combustible or hazardous liquids from encroaching on the LNG refueling facility.

(d) LNG shall not be vented to the atmosphere under normal operations unless the vent leads to a safe point of discharge. Vent pipes or stacks shall have the open end suitably protected to prevent entrance of rain, snow, and other foreign material. Vent stacks shall have provision for drainage.

(e) Instructions identifying the location and operation of emergency controls shall be conspicuously posted in the facility area.

(f) LNG fueling facility containers, liquid impoundment areas, and points of transfer shall be located according to the distances specified in §13.2110 of this title (relating to LNG container installation distance requirements).

(g) LNG fueling facility containers may be sited above or below grade. Soil susceptible to freezing from contact with containers shall be heated directly or protected with an air space.

(h) Containers having outer jackets made of materials subject to corrosion shall be protected against corrosion.

(i) Vehicles delivering LNG to a facility or vehicles being fueled from a facility shall not be considered sources of ignition. Vehicles containing fuel-fired equipment, such as recreational vehicles and catering trucks, shall be considered sources of ignition unless the fuel-fired equipment is shut off completely before the vehicle enters an area in which ignition sources are prohibited.

(j) LNG fueling facilities which transfer LNG at night shall have permanent lighting at points of transfer and operation, including at least two lights with a total of at least two footcandles of power.

(k) Temperature monitoring systems shall be provided where the foundations supporting cryogenic containers and equipment could be adversely affected by freezing or frost heaving of the ground.

*§13.2307. Indoor Fueling.*

(a) Buildings reserved exclusively for LNG fueling shall be constructed of noncombustible or limited combustible material. Windows and doors shall be located to permit ready egress in case of emergency.

(b) Buildings used for indoor fueling shall meet the following requirements:

(1) Indoor fueling facilities that are within a local fire marshal's jurisdiction shall obtain written approval from the local fire marshal, either by signature, seal, or stamp on LNG Form 2500 or on a separate letter.

(2) Indoor fueling facilities that are outside a local fire department's jurisdiction shall comply with the requirements of the *Uniform Building Code*.

(c) LNG Form 2500, including plans and specifications, shall be filed with the commission, as specified in §13.2040 of this title (relating to filings required for stationary LNG installations).

#### §13.2310. *Emergency Refueling.*

(a) Licensees and nonlicensees, such as mass transit authorities, may use a mobile refueling vehicle for emergency refueling provided it complies with the following requirements:

(1) The gross vehicle weight (GVW) shall not exceed the GVW rating. Installation of the container shall not adversely affect the vehicle.

(2) The vehicle used to transport the container shall comply with all DOT and Texas placarding requirements.

(3) The LNG cargo container shall have a maximum water capacity of 200 gallons.

(4) The container, fittings, and transfer equipment shall be properly secured against displacement.

(b) The individual performing the transfer of LNG shall be properly trained in all aspects of LNG transfer.

(c) Prior to the mobile refueling vehicle being placed into service, the licensee or nonlicensee shall file with the division a drawing showing the mounting, type of container, water capacity of the container, type of vehicle to be used, and the method of mounting. The vehicle shall not be placed into service until the division approves its use.

#### §13.2313. *Fuel Dispensing Systems.*

(a) Compliance with this section does not ensure conformity with other state and federal regulations, such as those of the Texas Natural Resources Conservation Commission or the United States Environmental Protection Agency. Retail LNG dispensers shall comply with the applicable weights and measures requirements of the Texas Department of Agriculture relating to dispensing accuracy.

(b) Appurtenances and equipment placed into LNG service shall be listed by a nationally recognized testing laboratory or other laboratories approved by the commission unless:

(1) the appurtenances or equipment are specifically prohibited for use by another section of the *Regulations for Liquefied Natural Gas*; or

(2) there is no test specification or procedure developed by a testing laboratory for the appurtenances or equipment.

(c) Appurtenances and equipment that are labeled but not listed and are not prohibited for use by the *Regulations for Liquefied Natural Gas* shall be acceptable and safe for LNG service over the full range of pressures and temperatures to which they will be subjected under normal operating conditions.

(d) The commission may require any documentation sufficient to substantiate any claims made regarding the safety of any valves, fittings, and equipment.

(e) Drive-away protection shall be provided.

(f) Emergency shut-down devices shall be distinctly marked for easy recognition according to the requirements of Table 1 of §13.2101 of this title (relating to uniform protection requirements) and shall activate a valve installed at the dispensing area that shuts off the power and gas supply to the dispensers. ESD devices shall be located as follows:

(1) For containers with water capacity of 93,240 gallons or less, an ESD device shall be located between 35 and 50 feet from the container.

(2) For containers with water capacity of 93,241 gallons or more, an ESD device shall be located between 60 and 75 feet from the container.

(g) Manually operated container valves shall be provided for each container.

(h) Manually operated shutoff valves shall be installed in manifolds as close as practicable to a container or group of containers.

(i) The use of hoses or arms in a fueling installation is limited to:

(1) a vehicle fueling hose;

(2) an inlet connection to compression equipment; or

(3) a section of metallic hose not exceeding 36 inches in length in a pipeline to provide flexibility where necessary. Metallic hose shall be installed so that it will be protected against damage and be readily visible for inspection. The manufacturer's identification shall be retained for each section of metallic hose used.

(j) When a hose or arm of nominal three-inch diameter or larger is used for liquid transfer, or nominal four-inch diameter or larger is used for vapor transfer, an emergency shutoff valve shall be installed in the piping of the transfer system less than ten feet from the nearest end of the hose or arm. If the flow is away from the hose, a check valve may be used as the shutoff valve. If a liquid or vapor line has two or more legs, an emergency shutoff valve shall be installed in each leg.

(k) The fill line on storage containers shall be equipped with a backflow check valve to prevent discharge of LNG from the container in case of line, hose, or fitting rupture.

(l) A fueling connection and mating vehicle receptacle shall be used to transfer LNG or gas vapor to or from the vehicle.

(m) An interlock device shall be provided so that the hose coupling cannot be released while the transfer line is open. Interlock devices are not required for transports when transferring fuel to a stationary tank.

(n) The maximum delivery pressure shall not exceed the maximum allowable working pressure of the vehicle and fuel tanks.

(o) Where excess flow check valves are used, the closing flow shall be less than the flow rating of the piping system that would result from a pipeline rupture between the excess flow valve and the equipment downstream of the excess flow check valve.

#### §13.2316. *Filings Required for Installation of Fuel Dispensers.*

After the installation of a fuel dispenser, LNG Form 2501 shall be filed with the commission along with the required fees set forth in §13.2040 of this title (relating to filings required for stationary LNG installations). Plans shall detail the area within 150 feet of the dispenser and the fuel storage container or to the facility's property

line, whichever is less. Tentative approval shall be granted if the plans indicate the installation will meet the requirements of the *Regulations for Liquefied Natural Gas* and the Natural Resources Code. Final approval shall be issued only after a field inspection confirms that the installed dispenser meets all the requirements of the *Regulations for Liquefied Natural Gas*.

*§13.2319. Automatic Fuel Dispenser Safety Requirements.*

(a) Automatic fuel dispensers shall be fabricated of material suitable for LNG and resistant to the action of LNG under service conditions. Pressure containing parts shall be stainless steel, brass, or other equivalent cryogenic material. Aluminum may be used for approved meters.

(b) Electric installations within dispenser enclosures and the entire pit or open space beneath dispensers shall comply with *NEC*, Class 1, Group D, Division 1, except for dispenser components located at least 48 inches above the dispenser base which *NEC* states are intrinsically safe.

(c) Valves, metering equipment, and other related equipment installed on automatic dispensers shall meet all applicable requirements of the *Regulations for Liquefied Natural Gas*.

(d) Automatic dispensers shall be protected from damage by vehicle collision by fencing and guardrails installed in accordance with §13.2101 of this title (relating to uniform protection requirements).

(e) A device shall be installed in the liquid piping so that displacement of an automatic dispenser will result in the displacement of such piping on the downstream side of the device.

(f) The fueling nozzle shall prevent LNG from being discharged unless the nozzle is connected to the vehicle.

(g) A key, card, or code system shall be used to activate the automatic dispenser.

(h) Automatic dispensers shall incorporate cutoff valves with opening and closing devices which ensure the valves are in a closed position when dispensers are deactivated.

(i) LNG fuel storage installations which include automatic dispensers shall be equipped with an emergency shut-down device for the entire LNG installation located at least 20 feet from the nearest dispenser or storage area. The emergency shut-down device shall be distinctly marked for easy recognition in compliance with the requirements of §13.2101 of this title (relating to uniform protection requirements).

(j) If automatic dispensers are to be used during hours of darkness, permanent adequate lighting shall be provided to facilitate proper operations.

*§13.2322. Protection of Automatic and Other Dispensers.*

(a) Dispensers shall be secured to a concrete island at least six inches above the normal grade and two inches above the grade of any other liquid fuel dispenser.

(b) Dispensers shall be protected against collision damage by support columns or other such protection installed at the approach ends of the concrete island.

(c) If the protection described in subsections (a) and (b) of this section cannot be provided, the dispensers shall be protected as specified in §13.2101 of this title (relating to uniform protection requirements).

*§13.2325. LNG Transport Unloading at Fueling Facilities.* Procedures and requirements for LNG transport unloading at fueling facilities shall be as specified in §13.2119 (relating to transport

vehicle loading and unloading facilities and procedures) of this chapter.

*§13.2328. Training, Written Instructions, and Procedures Required.*

(a) Dispensers may be operated only by an individual who has been properly trained in all aspects of the operation and safety procedures.

(b) Any individual who operates a dispenser shall be provided with written instructions and safe operating procedures by the licensee. Step-by-step operating instructions provided by the manufacturer shall be posted at or on each dispenser and shall be readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the dispenser.

(c) Licensees shall maintain a current list of all individuals trained in the safe operation of dispensers.

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 26, 1996.

TRD-9604226                      Mary Ross McDonald  
Assistant Director, Gas Services Section, Office of  
General Counsel  
Railroad Commission of Texas

Proposed date of adoption: June 11, 1996

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



## Subchapter K. Piping Systems and Components for all Stationary LNG Installations

- **16 TAC §§13.2401, 13.2404, 13.2407, 13.2410, 13.2413, 13. 2416, 13.2419, 13.2422, 13.2425, 13.2428, 13.2431, 13.2434, 13.2437, 13.2440**

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

*§13.2401. General Provisions for Piping Systems and Components.*

Piping systems shall comply with ANSI B31.3, *Chemical Plant and Petroleum Refinery Piping*. The additional provisions of this subchapter apply only to pressurized piping systems and components for LNG, flammable refrigerants, flammable liquids, and flammable gases, and unpressurized or low pressure piping systems, including vent lines and drain lines which handle LNG, flammable refrigerants, flammable liquids, and flammable gases with service temperatures below -20 degrees Fahrenheit.

*§13.2404. Piping Materials.*

(a) Piping materials, including gaskets and thread compounds, shall be suitable for use with LNG throughout the range of temperatures to which they will be subjected. The temperature limitations for pipe materials shall be as specified in ANSI B31.3.

(b) Piping which would be exposed during an emergency to the cold of an LNG or refrigerant spill or the heat of an ignited spill when either exposure could result in a failure of the piping which would significantly increase the emergency shall be:

(1) made of material that is suitable for both its normal operating temperature and the extreme temperatures to which it might be subjected during an emergency;

(2) protected by insulation or other means to delay failure due to such extreme temperatures until corrective action may be taken by the operator; or

(3) capable of being isolated and having the flow stopped in piping that would be exposed only to the heat of an ignited spill during the emergency.

(c) Piping insulation used in areas where the mitigation of fire exposure is necessary shall be made of material which will not propagate fire and shall maintain any properties which are necessary during an emergency when exposed to fire, heat, cold, or water.

(d) Furnace lap-weld, furnace butt-weld, cast iron, malleable iron, and ductile iron pipe shall be prohibited.

(e) When longitudinal or spiral weld pipe is used (welded with or without filler metal), the weld and heat-affected zone shall comply with ANSI B31.3, 323.2.2, and §13.2419 of this title (relating to welding at piping installations).

(f) Threaded pipe shall be at least schedule 80.

(g) A liquid line, excluding loading arms or hoses, on a storage container, cold box, or other major item of insulated equipment external to the outer shell or jacket whose failure can release a significant quantity of flammable fluid shall not be made of aluminum, copper, or copper alloy, or other material which has low resistance to flame temperatures unless such material is protected against fire exposure. Transition joints may be used if they are protected against fire exposure.

#### *§13.2407. Fittings Used in Piping.*

(a) Cast iron, malleable iron, and ductile iron shall not be used in fittings.

(b) Threaded nipples shall be at least schedule 80.

(c) Bends are permitted only in accordance with ANSI B31.3, 329.

(d) Solid plugs or bull plugs made of at least schedule 80 seamless pipe shall be used for threaded plugs.

(e) Compression-type couplings shall not be used where they will be subjected to temperatures below -20 degrees Fahrenheit unless such couplings meet the requirements of ANSI B31.3, 318.

#### *§13.2410. Valves.*

(a) Cast iron, malleable iron, and ductile iron shall not be used in valves in piping.

(b) Extended bonnet valves with or without bellows seals should be used for service temperatures below -50 degrees Fahrenheit.

#### *§13.2413. Installation of Piping.*

(a) Bolted connections shall be designed to withstand thermal contraction and expansion.

(b) Pipe joints larger than two-inch nominal diameter shall be welded or flanged. Joints of four-inch nominal diameter or less may be threaded where necessary for special connections to equipment provided that the special connection is not subject to fatigue-producing stresses. The number of threaded or flanged joints shall be kept to a minimum. Dissimilar metals shall only be joined by flanges or transition joint techniques which will not be adversely affected by LNG.

(c) Gasket material shall withstand as much as practicable exposure to fire.

(d) Piping and tubing shall be installed as directly as possible with provisions for expansion, contraction, jarring, vibration, and settling. Underground piping shall be buried at least 18 inches below the ground surface unless otherwise protected. Refrigerated piping shall not be buried unless the surrounding soil is heated.

#### *§13.2416. Installation of Valves.*

(a) Valves shall be installed to prevent leaking or malfunction due to freezing. Cryogenic liquid valves shall be installed at an angle greater than 45 degrees from horizontal.

(b) Isolation valves shall be provided on container, tank, and vessel connections, except for connections:

(1) for relief valves. Shutoff valves are only permitted at connections for relief valves in accordance with ASME Code, Section VIII, Division 1, Paragraphs UG-125(d) and Appendix M, Paragraphs M-5 and M-6;

(2) for liquid level alarms required by §13.2501 of this title (relating to liquid level gauging); or

(3) that are blind-flanged or plugged.

(c) Shutoff valves shall be located inside the impounding area as close as practicable to the containers, tanks, and vessels.

(d) Internal valves shall be designed and installed so that any failure of the nozzle will be downstream of the seat of the internal valve itself.

(e) The number of shutoff valves installed shall be kept to the minimum required for efficient and safe operation of each facility.

(f) Piping systems shall be designed to limit the contained volume that could be discharged in the event of a piping system failure. Sufficient valves which can be operated both at the installed location and from a remote location to shut down the process and transfer systems in the event of an emergency.

(g) Container connections larger than one-inch pipe size through which liquid can escape shall be equipped with:

(1) a valve which closes automatically if exposed to fire; or

(2) a remotely controlled, quick-closing valve which shall remain closed except during the operating period;

(3) a fail-close valve; or

(4) a check valve on filling connections.

(h) ESD valves shall be single-purpose valves.

(i) Valves and valve controls shall be designed to permit operation under icing conditions, if such conditions are possible.

(j) Powered controls shall be provided for emergency shutoff valves that would require excessive time to manually operate during an emergency or if the valve is eight inches or larger in size. A means for manual operation shall also be provided.

*§13.2419. Welding at Piping Installations Qualification and performance of welders shall comply with ANSI B31.3.* Oxygen-fuel gas welding is prohibited on piping for service temperatures below -20 degrees Fahrenheit. Electric arc or inert gas-shielded welding are permissible.

#### *§13.2422. Pipe Marking and Identification.*

(a) Markings on pipe shall be made with a material compatible with the basic material or with a round-bottom, low-stress die. Materials less than 1/4 inch in thickness shall not be die-stamped.

(b) Marking materials that are corrosive to the pipe material shall not be used.

(c) Piping shall be identified by color-coding, painting, or labelling so as to be readily readable.

#### *§13.2425. Pipe Supports.*

(a) Pipe supports, including insulation systems used to support pipe whose integrity is essential to facility safety, shall be resistant to or protected from fire exposure, escaping cold liquid, or both, if such exposure is possible.

(b) Pipe supports for cold lines shall be designed to prevent excessive heat transfer which can result in piping restraints caused by ice formations or embrittlement of supporting steel. Design of supporting elements shall conform with ANSI B31.3, 321.

#### *§13.2428. Inspection and Testing of Piping.*

(a) Pressure tests shall be conducted in accordance with ANSI B31.3, 337.

(b) Pressure, test medium temperature, and ambient temperature shall be recorded for the duration of each test and these records shall be maintained for the life of the facility or until such time as a retest is conducted.

#### *§13.2431. Welded Pipe Tests.*

(a) Longitudinal or spiral welded pipe which will be subjected to service temperatures below -20 degrees Fahrenheit shall have a design pressure of less than 2/3 of the mill proof test pressure or subsequent shop or field hydrostatic test pressure, except for pipe which has been subjected to 100% radiographic or ultrasonic inspection of the longitudinal or spiral weld.

(b) Circumferential butt-welds shall be fully examined by radiographic or ultrasonic inspection. Piping with an operating pressure that produces a hoop stress of less than 20% specified minimum yield stress need not be nondestructively tested provided it has been visually inspected in accordance with ANSI B31.3, 336.4.2.

(c) Socket welds and fillet welds shall be fully examined by liquid penetrant.

(d) Fully penetrated groove welds for branch connections required by ANSI B31.3, 327.4.4 shall be fully examined by inprocess examination in accordance with ANSI B31.3, 336.4.7, and shall also be examined by liquid penetrant after the final pass of the weld. If specified in the engineering design or specifically authorized by the inspector, examination by radiographic or ultrasonic techniques may be substituted for the examinations required by this paragraph.

(e) Nondestructive examination methods, limitations on defects, qualifications of the authorized inspector, and personnel performing the examination shall meet the requirements of ANSI B31.3, 336.

(f) Test records and written procedures required when conducting nondestructive examinations shall be maintained for the life of the piping system or until such time as a reexamination is conducted.

(g) Records and certifications pertaining to materials, components, and heat treatment as required by ANSI B31.3, 336.5.1(c) and 336.5.3(d) shall be maintained for the life of the system.

*§13.2434. Purging of Piping Systems.* Piping systems shall be purged of air or gas in a safe manner. Blow-down and purge connections shall be provided to facilitate purging of all process and flammable gas piping. Such connections shall be installed to eliminate all hazards to a safe operating condition.

#### *§13.2437. Pressure and Relief Valves in Piping.*

(a) Pressure relieving safety devices shall be installed to minimize damage to equipment and personnel. The means for adjusting relief valve set pressure shall be sealed.

(b) Thermal expansion relief valves shall be installed to prevent overpressure in any section of cold liquid or cold vapor piping which can be isolated by valves.

(c) Thermal expansion relief valves shall be set to discharge above the maximum pressure normally expected in the line but less than the rated test pressure of the line they protect.

(d) Discharge from the valves shall be directed to minimize hazard to personnel or equipment and the discharge location shall be approved by the commission.

#### *§13.2440. Corrosion Control.*

(a) Underground and submerged piping shall be protected and maintained in accordance with the National Association of Corrosion Engineers Standard RP-01-69M, *Control of External Corrosion of Underground or Submerged Metallic Piping Systems*.

(b) Austenitic stainless steels and aluminum alloys shall be protected to minimize corrosion and pitting from corrosive atmospheric and industrial substances during storage, construction, fabrication, testing, and service.

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 26, 1996.

TRD-9604227

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

Proposed date of adoption: June 11, 1996

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



### Subchapter L. Instrumentation and Electrical Services

#### • 16 TAC §§13.2501, 13.2504, 13.2507, 13.2510, 13.2513, 13.2516

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

#### *§13.2501. Liquid Level Gauging.*

(a) LNG containers shall be equipped with liquid level gauging devices. Density variations shall be considered in the selection of the gauging device. Consideration shall be given to a secondary or backup gauge. At least one of these gauges shall be replaceable without taking the container out of operations.

(b) When the container filling rate is greater than 1.0% per day, the container shall be provided with a high-liquid-level alarm which shall be separate from the liquid level gauging device. The alarm shall be set so that the operator will have sufficient time to stop the flow without exceeding the maximum permissible filling height, and shall be located so that it is visible and audible to personnel controlling the filling. A high-liquid-level flow cutoff device, if used, shall not substitute for the alarm.



(c) Containers with a capacity of 93,240 gallons or less which are continuously attended during the filling operation may be equipped with trycocks in lieu of the high-liquid-level alarm.

*§13.2504. Pressure Gauges.* LNG containers shall be equipped with a pressure gauge connected to the container at the point above the maximum intended liquid level.

*§13.2507. Vacuum Gauges.* Vacuum-jacketed containers shall be equipped with instruments or connections for checking the absolute pressure in the annular space.

*§13.2510. Emergency Failsafe.* Facilities shall be designed so that if power or instrument air fails, the system will go into a failsafe condition that will be maintained until the operator can take appropriate action to either reactivate or secure the system.

*§13.2513. Electrical Equipment.*

(a) Electrical equipment and wiring shall be installed in accordance with the applicable sections of *NEC*.

(b) Fixed electrical equipment and wiring installed within the areas specified in Table 1 of subsection (h) of this section shall comply with the requirements specified.

(c) Seals, barriers, or other means used to comply with this section shall be designed to prevent the passage of flammable fluids through the conduit, stranded conductors, and cables. Such means may include but not be limited to:

(1) a physical interruption of the conduit run and of the stranded conductors through the use of an adequately vented junction box containing terminal strip or busbar connections;

(2) an exposed section of MI cable using suitable fittings; or

(3) an exposed section of single conductor which is incapable of transmitting gases or vapors.

(d) A primary seal shall be provided between the flammable fluid system and the electrical conduit wiring system. If the failure of the primary seal would allow the passage of flammable fluids to another portion of the conduit or wiring system, an additional seal shall be provided to prevent the passage of the flammable fluid beyond the additional device or means.

(e) Unless specifically designed and approved for the purpose, the seals specified in this section are not intended to replace the conduit seals required in *NEC*.

(f) Where primary seals are installed, drains, vents, or other devices shall be provided for monitoring purposes to detect flammable fluids and leaking.

(g) Primary seals shall be designed to withstand the service conditions to which they may be exposed. Additional seals or barriers and interconnecting enclosures shall meet the pressure and temperature requirements of the condition to which they could be exposed in the event of failure of the primary seal, unless other approved means are provided to accomplish this purpose.

(h) The classified areas described in Table 1 of this section shall not extend beyond an unpierced wall, roof, or solid vaportight partition.

Figure: 16 TAC §13.2513(h)

*§13.2516. Electrical Grounding and Bonding.*

(a) Electrical grounding and bonding shall be provided as recommended by NFPA 77, *Static Electricity*, Sections 5.4 and 6.1.3, and as required by the *NEC*.

(b) Static protection is not required when container vehicles are loaded or unloaded by conductive or nonconductive hose, flexible metallic tubing, or pipe connections through or from tight top or bottom outlets where both halves of metallic couplings are in contact.

(c) If stray currents may be present or if impressed currents are used on loading and unloading systems such as for cathodic protection, protective measures to prevent ignition shall be taken in accordance with API RP 2003, *Protection Against Ignitions Arising Out of Static, Lightning and Stray Currents*.

(d) Grounding shall be provided for tanks supported on nonconductive foundations. Metal storage containers and tanks do not require lightning protection.

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 26, 1996.

TRD-9604228 Mary Ross McDonald  
Assistant Director, Gas Services Section, Office of  
General Counsel  
Railroad Commission of Texas

Proposed date of adoption: June 11, 1996

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

◆ ◆ ◆  
**Subchapter M. Engine Fuel Systems**

• **16 TAC §§13.2601, 13.2604, 13.2607, 13.2610, 13.2613, 13. 2616, 13.2619, 13.2622, 13.2625, 13.2628, 13.2631, 13.2634, 13.2637, 13.2640, 13.2643**

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

*§13.2601. Applicability.* This subchapter applies to the design, installation, inspection, and testing of LNG fuel supply systems for vehicle engines and other engines installed on a vehicle.

*§13.2604. System Component Qualification.*

(a) Components in the engine compartment normally in contact with LNG shall be suitable for service over a range of temperatures of -260 degrees Fahrenheit to +250 degrees Fahrenheit. Other components not normally in contact with LNG shall be suitable for service over a range of -40 degrees Fahrenheit to +250 degrees Fahrenheit.

(b) Components outside the engine compartment shall be suitable for service over a range of temperatures from -40 degrees Fahrenheit to +180 degrees Fahrenheit.

(c) Fuel-carrying components (excluding service valves, tubing, and fittings) shall be labeled or stamped with the following:

- (1) the manufacturer's name or symbol;
- (2) the model designation;
- (3) the maximum allowable maximum allowable working pressure;
- (4) the design temperature range;
- (5) direction of flow of fuel when necessary for correct installation; and
- (6) capacity or electrical rating as applicable.

*§13.2607. Vehicle Fuel Containers.*

(a) Containers shall be designed, tested, and marked or stamped in accordance with DOT Specification 4L or ASME Code, "Rules for the Construction of Unfired Pressure Vessels," Section VIII, Division 1, applicable on the date of manufacture.

(b) The owner of a container shall be responsible for its suitability for continued service.

(c) Repair or alteration of containers shall comply with the Code under which that container was fabricated. Licensees making repairs or alterations shall file LNG Form 2008 with the commission.

(d) Containers shall be equipped with a dip tube or other device so that the maximum filling volume of the container complies with §13.2107 of this title (relating to stationary LNG storage containers).

(e) Containers shall be constructed so that the unrelieved pressure inside the container shall not exceed the maximum allowable working pressure of the container within a 72-hour period at an ambient temperature of 70 degrees Fahrenheit after the container has been filled with LNG stabilized at the maximum allowable working pressure and temperature equilibrium has been established.

(f) Connections for pressure relief valves shall be located and installed to communicate directly with the vapor space.

(g) Containers shall have permanent identification markings, decals, or stencils to identify:

(1) the total volumetric capacity of the container in gallons;

(2) the words, "FOR LNG ONLY," in capital letters at least one inch high in a location that is visible after installation; and

(3) all inlets and outlets, except relief valves and gauging devices, designating whether they communicate with vapor or liquid space.

(h) Container appurtenances shall be fabricated of materials suitable for LNG service. Pressure containing metal parts of appurtenances, except fusible elements, shall have a minimum melting point of +1,500 degrees Fahrenheit. Container appurtenances shall have a rated maximum allowable working pressure not less than the maximum allowable working pressure of the container.

(i) Containers shall be equipped with the pressure relief devices and pressure control valves required by the code or regulations under which the containers were designed. The pressure relief devices and pressure control valves shall communicate directly with the vapor space of the container, and shall be designed to minimize the possibility of tampering. Externally set or adjusted valves shall be provided with a means of sealing the adjustment.

(j) Valves shall be readily accessible and operable without the use of tools. A shutoff valve shall be installed directly on the container vapor outlet with no intervening fitting other than pressure relief devices and shall be marked with the words, "VAPOR SHUTOFF VALVE." Another shutoff valve shall be installed directly on the container liquid outlet and shall be marked with the words, "LIQUID SHUTOFF VALVE." The markings shall be in capital letters. Decals or stencils are acceptable. Normally closed automatic shutoff valves that are held open by electric current or manually operated shutoff valves may be used.

*§13.2610. Installation of Vehicle Fuel Containers.*

(a) Vehicle fuel containers shall comply with the following specifications:

(1) Fuel containers on vehicles other than school buses, mass transit, or other vehicles used in public transportation may be located within, below, or above the driver or passenger compartments, provided all connections to the containers are external to or sealed and vented from those compartments. The motor fuel containers installed on a special transit vehicle may be installed in the passenger compartment, provided all connections to the cylinders are external to or sealed and vented from those compartments.

(2) Fuel supply components and containers shall be mounted in a location to minimize damage from collision. No part of a container or its appurtenances shall protrude beyond any part of the vehicle at the point of installation.

(3) Fuel systems shall be installed with as much road or ground clearance as practicable, but not less than the minimum road or ground clearance of the vehicle when loaded to its gross vehicle weight rating. The minimum distance shall be measured from the lowest part of the fuel system.

(4) No portion of a fuel supply container or container appurtenance shall be located ahead of the front axle or behind the rear bumper mounting face of a vehicle. Fuel container valves shall be protected from physical damage using the vehicle structure, valve protectors, or a suitable metal shield.

(5) Fuel supply containers located less than eight inches from the exhaust system shall be shielded from direct heat.

(6) Mountings shall minimize fretting corrosion between the fuel container and the mounting system by means of rubber insulators or other suitable means.

(7) Fuel containers shall not be installed where they would adversely affect the driving characteristics of the vehicle.

(8) Fuel containers on school buses or mass transit vehicles shall be installed on the underside of the vehicle, except as specified in subsection (c) of this section. Fuel containers on special transit vehicles shall be installed in a location which will not interfere with vehicle operation.

(9) Fuel containers, appurtenances, and connections may be enclosed in a shroud-type structure, provided it is securely attached to the container and liquid-tight. The shroud access doors shall be secured in place by fasteners such as wing nuts or spring-loaded latches and shall not require the use of tools for removal. The use of locks on shroud access doors is prohibited.

(b) Fuel supply containers shall be connected or mounted to comply with the following specifications:

(1) Fuel supply container connections shall be external to or sealed and vented from the driver and passenger compartments or any space containing radio transmitters or other spark-producing equipment.

(2) Container brackets shall be secured to the vehicle body, bed, or frame with bolts, lock washers and nuts, or self-locking nuts of a size and strength capable of withstanding a static force in any direction of eight times the weight of a full container. Mounting brackets shall be marked with the manufacturer's name or logo. If self-locking nuts are installed, they shall not be reused once they are removed. Container mounting brackets shall prevent the container from jarring loose, slipping or rotating.

(3) Fuel supply containers shall be secured in the mounting brackets by bolts, lock washers, and nuts, or self-locking nuts of a size and strength capable of withstanding a static force applied in any direction eight times the weight of the full container. If self-locking nuts are installed, the nuts shall not be reused once they are removed.

(4) The weight of the fuel container shall not be supported by the outlet, service valves, manifolds, or other fuel connections.

(5) Containers shall be secured to a school bus, mass transit, or special transit vehicle frame excluding the floor by container fastenings or mounting brackets described in subsection (b) of this section. The fastenings or brackets shall be secured to the frame, backing plates, or other supporting structure without compromising the strength of that structure.

(c) Roof-mounted containers are allowed if the vehicle was originally designed and manufactured to have roof-mounted containers or if the original manufacturer approves the design of the structure mounting. Vehicles shall not be modified to have roof-mounted containers.

(d) Container markings shall be readable after a container is permanently installed on a vehicle. A portable lamp or mirror may be used to read markings.

(e) Where an LNG container is substituted for the fuel container installed by the original manufacturer of the vehicle, whether or not that fuel container was for LNG, the LNG container shall either fit within the space in which the original fuel container was installed or comply with subsection (a) of this section.

(f) If necessary, a plumbing chamber door shall be provided in the sidewall of the school bus, mass transit, or special transit vehicle to allow for easy access for filling or securing the service valve in the event of an emergency. The plumbing chamber door shall be hinged and latched, but not locked.

#### §13.2613. Engine Fuel Delivery Equipment.

(a) Vaporizers shall completely vaporize the LNG and heat the vapor to the appropriate temperature prior to the vapor entering the pressure regulator when the vaporizer is subjected to the maximum fuel flow rate. Vaporizers shall be permanently marked at a readily visible point with the maximum allowable working pressure of the fuel-containing portion of the vaporizer. Engine exhaust gases may be used as a direct source of heat to vaporize the fuel if the materials of construction of those parts of the vaporizer in contact with the exhaust gases are resistant to corrosion from those gases.

(b) Pressure regulator inlets and chambers shall have a maximum allowable working pressure of at least the maximum allowable working pressure of the container.

(c) Pressure gauges shall be designed for the pressure and temperature conditions to which they may be subjected with a burst pressure safety factor of at least four. Dials shall be graduated to read at least 1.2 times the pressure at which a pressure relief device is set to function. Gauges shall have an opening not to exceed 0.055 inches (Number 54 drill size) at the inlet connection.

(d) Pipe, tubing, and fittings between the vehicular fuel container and the pressure regulator shall be designed to withstand a pressure of at least two times the maximum allowable working pressure of the container.

(1) Gaskets and packing material shall be suitable for the intended service.

(2) Pipe shall be stainless steel, brass, or copper, and shall comply with the following:

(A) stainless steel pipe: ANSI B36.19, *Specification for Stainless Steel Pipe* (ASTM A 312);

(B) brass pipe: ANSI H27.1, *Specification for Seamless Red Brass Pipe, Standard Size* (ASTM B 43);

(C) copper pipe: ANSI H26.1, *Specification for Seamless Copper Pipe, Standard Sizes* (ASTM B 42).

(3) Tubing shall be stainless steel, brass, or copper, and shall comply with the following:

(A) stainless steel tubing: ANSI B31.3, *Specification for Seamless and Welded Austenitic Steel Tubing for General Service* (ASTM A 269);

(B) copper tubing: Type K or L, ANSI H23.1, *Specification for Seamless Copper Water Tube* (ASTM B 88);

(C) copper tubing: ANSI H23.5, *Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service* (ASTM B 280); or

(D) brass tubing: ANSI H36.1, *Specification for Seamless Brass Tube* (ASTM B 135).

(4) Pipe and tube fittings shall be stainless steel, brass, or copper. Pipe joints shall be threaded, welded, or brazed. Tubing joints shall be flared, welded, brazed, or made with tube fittings.

#### §13.2616. Installation of Venting Systems and Monitoring Sensors.

(a) Pressure relief devices and pressure carrying components installed within a closed compartment shall be vented to the outside of the vehicle in a suitable location.

(b) Vents shall not exit into a wheel well.

(c) Vents shall not restrict the operation of a fuel container pressure relief device or pressure relief device channel. Vent lines shall be located and secured to permit the required relief discharge capacity and to minimize the possibility of physical damage.

(d) Vent lines shall be equipped with a means to minimize the possibility of water or other foreign material from entering the relief device or vent line. Such means shall remain in place except when the relief device operates and shall permit the relief device to operate at the required capacity.

(e) Escaping gas shall not impinge on fuel supply containers and shall not be directed into wheel wells, at persons or other vehicles in traffic, at the engine air intake, or in a manner that would create a hazard.

(f) Safety relief valve discharge shall be directed or vented so that any gas released will not directly impinge upon containers, any part of the vehicle, adjacent persons or vehicles, or the inside of the passenger or luggage compartment.

(g) The outlet of the discharge line shall be configured or fitted with a device to prevent the formation or accumulation of any ice that will prevent the relief device from operating at required capacity.

(h) Monitoring sensors shall be installed on all LNG-fueled vehicles to detect hazardous levels of LNG. The presence of LNG is considered hazardous when it reaches one-fifth of the LFL. If the level exceeds one-fifth of the LFL, the sensor shall either shut the system down or sound an alarm. The number of sensors to be installed shall comply with the manufacturer's instructions regarding the area of coverage for each sensor and the size of the vehicle. The sensors shall be installed and maintained in accordance with the manufacturer's instructions.

#### §13.2619. Installation of Piping.

(a) Piping that carries fuel shall be fabricated to minimize vibration and shall be shielded or installed in a protected location to prevent damage from unsecured objects.

(b) Fuel lines shall be mounted, braced, and supported to minimize vibration and protected against damage, corrosion, or breaking due to strain or wear. Fuel lines shall be supported at least every 21 to 27 inches.

(c) Fuel lines passing through a panel shall be protected against abrasion by grommets or similar devices such as bulkhead fittings, which shall snugly fit both the supply lines and the holes in the panel.

(d) Fuel lines shall have a minimum clearance of eight inches from the engine exhaust system or shall be shielded against direct heat.

(e) Piping or tubing shall pass through the floor of a vehicle directly beneath or adjacent to the container. If a branch line is required, the tee connection shall be in the main fuel line under the floor and outside the vehicle.

(f) Hydrostatic relief valves shall be installed in each section of piping or tubing in which LNG can be isolated between shutoff valves to relieve to a safe atmosphere the pressure which could develop from the trapped fuel. The pressure relief valve shall have a pressure not greater than the maximum allowable working pressure of the line it protects.

(g) Joint compound or tape acceptable for use with LNG shall be applied to all male pipe threads prior to assembly.

(h) Piping and fittings shall be clean and free from cutting or threading burrs and scaling. The ends of all piping shall be reamed.

(i) Bends in piping or tubing are prohibited if the bend weakens the pipe or tubing. Bends shall be made by bending tools designated for this purpose.

(j) Joints or connections shall be located only in an accessible location.

(k) Fuel connections between a tractor and trailer or other vehicle units are prohibited.

#### *§13.2622. Installation of Valves.*

(a) Valves, valve packings, gaskets, and seats shall be suitable for the intended service and shall comply with the following:

(1) Shutoff valves shall have a maximum allowable working pressure of at least the maximum allowable working pressure of the container. Leakage shall not occur at less than 1 1/2 times the maximum allowable working pressure of the valve.

(2) Valve parts, except gaskets, packing, and seats that come in contact with the fuel shall be stainless steel, brass, or copper.

(b) Valves shall be securely mounted and shielded or installed in a protected location to minimize damage from vibration and unsecured objects.

(c) A positive shutoff valve shall be installed in the fuel supply line at the inlet to the pressure regulator. The shutoff valve shall automatically close and prevent the flow of fuel to the engine when the ignition switch is off or in the accessory position, or when the engine is not running and the ignition switch is on.

(d) When multiple fuel systems are installed on the vehicle, automatic valves shall be provided as necessary to shut off the fuel not being used.

(e) Fueling systems shall be equipped with a backflow check valve which will prevent the return of gas from the container to the filling connection.

(f) Valves shall be installed so that their weight is not placed on or supported by the attached lines.

#### *§13.2625. Installation of Pressure Gauges.*

(a) Pressure gauges located within driver or passenger compartments shall be installed so that no gas will flow through the gauge in the event of failure. Installed gauges shall be readily visible by the driver.

(b) Pressure gauges installed outside driver or passenger compartments shall be equipped with a limiting orifice, a shatter-proof dial lens, and a body relief.

(c) Gauges shall be securely mounted, shielded, and installed in a protected location to prevent damage from vibration and unsecured objects.

#### *§13.2628. Installation of Pressure Regulators.*

(a) Automatic pressure reducing regulators shall be installed to reduce the fuel container pressure to a level consistent with the maximum allowable working pressure required by the engine fuel system.

(b) Means shall be provided to prevent regulator malfunctions due to low temperatures.

(c) Regulators shall be installed so that their weight is not placed on or supported by the attached gas lines.

#### *§13.2631. Wiring.*

(a) Wiring shall be installed, supported, and secured in a manner to prevent damage due to vibration, shock, strains, wear, or corrosion.

(b) Wiring shall be sized and fuse-protected with the size and fuse rating adequate for the current draw.

#### *§13.2634. Vehicle Fueling Connection.*

(a) Vehicle fueling connections shall provide for the reliable and secure connection of the fuel system containers to a source of LNG.

(b) Fueling connections shall be designed for the pressure expected under normal conditions and corrosive conditions which might occur.

(c) Fueling connections shall prevent escape of gas when the connector is not properly engaged or becomes separated.

(d) Refueling receptacles on engine fuel systems shall be firmly supported and shall:

(1) receive the fueling connector and accommodate the maximum allowable working pressure of the vehicle fuel system;

(2) incorporate a means to prevent the entry of dust, water, and other foreign material. If the means used is capable of sealing system pressure, it shall be capable of being depressurized before removal; and

(3) have a different fueling connection for each pressure base vehicle fuel system.

#### *§13.2637. Signs and Labeling.*

(a) Signs or labels shall be readily visible before and during transfer operations, shall be weather-resistant, and shall be located as specified in Table 1 of this section.  
Figure: 16 TAC §13.2637(a)

(b) Vehicles shall be identified with a weather-resistant diamond-shaped label located on an exterior vertical or near vertical surface on the lower right rear of the vehicle (excluding the bumper)

inboard of any other markings. The label shall be at least 4 3/4 inches by 3 1/4 inches. The marking shall consist of a border and the capital letters, "LNG"; the letters shall be at least one inch tall, and be silver or white reflective luminous material on a blue or black background.

(c) Upon completion of a vehicle conversion, the licensee making the conversion shall affix to the vehicle an identification tag or decal in a location that is easily readable. The tag or decal shall contain letters that indicate the licensee's name, current license number, and the year and month the conversion was made.

#### *§13.2640. System Testing.*

(a) The complete LNG engine fuel system shall be leak tested.

(b) After installation, the piping and connections that are subject to container pressure shall be checked with a non-ammonia soap solution or a leak detector instrument after the equipment is connected and pressurized to its 90% of the maximum allowable working pressure of the container.

(c) If the completed LNG engine fuel system is leak tested with natural gas, the testing shall be done under adequately ventilated conditions.

(d) If an LNG container is involved in an accident or fire causing damage to the container, the container shall be replaced or removed and returned to a currently licensed Category 15 licensee or Category 55 licensee to be inspected and retested in accordance with the original manufacturer's specifications. The licensee who performs any repair, modification, or testing of a container shall file LNG Form 2008 with the commission before the container is returned to service.

(e) If a vehicle is involved in an accident or fire causing damage to any part of the LNG engine fuel system, the system shall be replaced or repaired as provided in these regulations and retested before it is returned to service.

#### *§13.2643. Maintenance and Repair.*

(a) The owner or user or both shall maintain containers, container appurtenances, piping systems, venting systems, and other components in a safe condition.

(b) Repair or alteration of pressure relief devices and fuel lines is prohibited. Damaged pressure relief devices and fuel lines shall be replaced.

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 26, 1996.

TRD-9604229      Mary Ross McDonald  
Assistant Director, Gas Services Section, Office of  
General Counsel  
Railroad Commission of Texas

Proposed date of adoption: June 11, 1996

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



### Subchapter N. LNG Transports

- **16 TAC §§13.2701, 13.2704, 13.2707, 13.2710, 13.2713, 13. 2716, 13.2719, 13.2722, 13.2725, 13.2728, 13.2731, 13.2734, 13.2737, 13.2740, 13.2743, 13.2746, 13.2749**

The new sections are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed new sections: Texas Natural Resources Code, §116.012.

#### *§13.2701. DOT Requirements.*

(a) This subchapter applies to transport containers constructed to MC-338 DOT specifications and used in the transportation and distribution of LNG.

(b) Transports not registered with the commission prior to August 1, 1996, shall meet MC-338 DOT specifications.

#### *§13.2704. Registration of LNG Transports.*

(a) Transport trucks, trailers, or other motor vehicles equipped with an LNG transport tank shall be registered with the commission according to the requirements of Table 1 of this section. Figure: 16 TAC §13.2704(a)

(b) A licensee who has purchased, leased, or obtained other rights to use any unit described in subsection (a) of this section shall register that unit by meeting the requirements of Table 1 of subsection (a) of this section. The unit shall be registered in the name or DBA names under which the licensee or ultimate consumer conducts business before the unit is used in LNG service.

(c) Registration and transfer fees shall be paid in full before any unit may be registered or re-registered.

#### *§13.2707. Testing Requirements.*

(a) Transport container units required to be registered with the commission shall be tested at least once every five years in accordance with the commission approved manual of a Category 15, 20, or 50 licensee, or the registered testing laboratory performing the test.

(1) Documentation of the required testing shall be filed by the Category 15, 20, or 50 licensee or by the testing laboratory registered with the commission.

(2) The results of any test required under this section shall clearly indicate whether the transport container unit is safe for LNG service and shall be filed with the commission by the licensee or registered testing laboratory that performed the test on LNG Form 2008. The licensee or testing laboratory shall mail the form to the commission within 30 days of the due date of any tests required under this section.

(3) If evidence of any unsafe condition is discovered as a result of any tests performed under this section, the transport container unit shall be immediately removed from LNG service and may not be returned to LNG service until the commission notifies the licensee in writing that the transport container unit may be returned to LNG service.

(4) Transport container units that have been out of LNG service for one year or more shall not be returned to LNG service until they have met the testing requirements of this section.

(b) Containers shall be subjected to a hydrostatic chart-recorded test for a continuous period of 30 minutes. During such test, the internal pressure shall be hydraulically generated to 1 1/2 times the maximum allowable working pressure of the container. Valves shall be handled as follows:

(1) Safety relief valves may be blocked during the test only if the blocks are placed immediately prior to the test and removed immediately upon completion of the test.

(A) Safety relief valves shall be removed from the transport container and tested for the purpose of the five-year test.

(B) Safety relief valves shall open at the required set pressure and reset to a leak-tight condition at 90% of the set-to-discharge pressure. If they do not meet this requirement, they shall be replaced.

(2) Shutoff valves for the container openings may be closed during the test.

(c) Containers shall be inspected for corroded areas, dents, or other conditions (including leakage under test pressure) which could render the container unsafe for LNG service.

*§13.2710. Markings.*

(a) LNG transports and container delivery units in LNG service shall be marked with the name of the licensee or the ultimate consumer operating the unit. The name shall be in letters at least two inches in height and in sharp color contrast to the background. The commission will determine whether the marking is sufficient to properly identify the operator.

(b) Other markings shall comply with other DOT marking requirements.

(c) If a transport unit is loaned or leased for a period of time not to exceed 30 days, the unit may have painted or permanently affixed thereon, in lieu of the name of the licensee operating the transport unit, the name of the owner of the transport unit in letters at least two inches in height.

*§13.2713. Pressure Gauge.* Transport containers shall be equipped with a pressure gauge for LNG service which shall be maintained in good operating condition at all times. An isolation valve shall be installed between the container and the pressure gauge.

*§13.2716. Supports.* Transport containers shall be supported as required by DOT Regulations, §178.337-13.

*§13.2719. Electrical Equipment and Lighting.* LNG transports and container delivery units shall not be equipped with an artificial light other than electrical. Lighting circuits shall have suitable overcurrent protection (fuses or automatic circuit breakers). Wiring shall have sufficient current capacity and mechanical strength, and shall be secured, insulated, and protected against physical damage.

*§13.2722. Liquid Level Gauging Devices.* Truck and trailer containers shall be equipped with a liquid level gauging device of approved design, such as a fixed tube device. Fixed tube devices shall be arranged so that the maximum liquid level to which the container may be filled is set at the maximum permitted for the container based on an initial liquid temperature not to exceed 40 degrees Fahrenheit. An isolation valve shall be installed between the container and the liquid level gauging device.

*§13.2725. Exhaust System.* No part of the exhaust system on any LNG transport or container delivery unit shall be located less than six inches unless shielded from any piping, pump, and/or compressor. The exhaust system discharge shall not impinge on the containers, piping, or related appurtenances.

*§13.2728. Extinguishers Required.*

(a) Transport power units shall be equipped with at least one fire extinguisher having a UL rating of 10 B:C or more, and shall be labeled or marked with that rating.

(b) Fire extinguishers shall be fully charged, in good mechanical condition, and accessible for use. Fire extinguishers shall be mounted with a mounting bracket which will allow visual determination of being fully charged.

*§13.2731. Manifests.* Manifests or bills of lading shall be covered by permanent shipping papers authorized by the DOT.

*§13.2734. Transfer of LNG on Public Highways, Streets, or Alleys.*

Transferring LNG on public highways, streets, or alleys is prohibited except in an emergency or where the containers are on machinery being used for the construction or maintenance of such public highways, streets, or alleys.

*§13.2737. Parking of LNG Transports and Container Delivery Units, and Use of Chock Blocks.*

(a) LNG transport or container delivery units shall not be parked on any public street, highway, or alley, except in an emergency, or when in connection with normal duties, meals, or rest stops. Such units shall not be parked in a congested area and shall be parked a minimum distance of 50 feet from any building, except buildings devoted exclusively to LNG operations.

(b) LNG transports shall carry at least two chock blocks designed to effectively prevent the movement of the transport. These blocks shall be used any time the transport is parked and during the transfer of fuel regardless of the level of the surrounding terrain.

*§13.2740. Uniform Protection Standards.*

(a) LNG transport units and container delivery units, including appurtenances, shall be maintained in a safe operating condition at all times.

(b) Any transport unit or container delivery unit discovered to be in an unsafe condition while being operated on a public roadway may be continued in operation only to the nearest place where repairs can safely be made. Such operation shall be conducted only if it is less hazardous to the public than to permit the transport unit or container delivery unit to remain on the public roadway.

*§13.2743. Inspection of Transport Containers.* Transport containers shall receive an external visual inspection by commission personnel at least once during four fiscal years of the commission, which begin September 1 and end August 31.

*§13.2746. Delivery of Inspection Report to Licensee.* The transport driver of any transport unit receiving an inspection report from the commission shall deliver that report to the licensee in whose name the transport unit is registered.

*§13.2749. Issuance of LNG Form 2004 Decal.*

(a) An LNG Form 2004 decal shall not be issued to any transport that has not been tested as required by §13.2707 of this title (relating to testing requirements) at least once in the preceding five years and physically inspected by the commission as required by §13.2743 of this title (relating to inspection of transport containers). An LNG Form 2004 decal shall not be issued to any transport that has been determined to be unsafe for LNG service by the commission or a testing agency registered with the commission in accordance with §13.2707 of this title (relating to testing requirements).

(b) An LNG Form 2004 decal, when issued by the commission and properly affixed, shall authorize the licensee or ultimate consumer to whom it has been issued to operate such unit in the transportation of LNG and to fill the transport containers.

(c) No person shall operate an LNG transport unit or container delivery unit in this state unless an LNG Form 2004 decal authorizing its operation has been affixed in accordance with place-

ment instructions or unless its operation has been specifically approved by the commission.

(d) No person shall introduce LNG into a transport container unless an LNG Form 2004 issued for that unit is properly affixed in accordance with placement instructions or unless specifically approved by the commission.

(e) The LNG Form 2004 decal is not transferable by the person to whom it has been issued, but shall be registered by any subsequent licensee or ultimate consumer prior to the vehicle being placed into LNG service.

(f) This subsection shall not prevent a container manufacturer/fabricator from introducing a reasonable amount of LNG into a newly constructed container in order to properly test the vessel, piping system, and appurtenances prior to the initial sale of the container. The LNG shall be removed from the transport container prior to the unit leaving the container manufacturer/fabricator's premises.

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 26, 1996.

TRD-9604230 Mary Ross McDonald  
Assistant Director, Gas Services Section, Office of  
General Counsel  
Railroad Commission of Texas

Proposed date of adoption: June 11, 1996

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

## Part IV. Texas Department of Licensing and Regulation

### Chapter 70. Industrialized Housing and Buildings

#### • 16 TAC §§70.50, 70.51, 70.60, 70.61, 70.70, 70.73, 70.75, 70.77, 70.100, 70.101

The Texas Department of Licensing and Regulation proposes amendments to §§70.50, 70.51, 70.60, 70.61, 70.70, 70.73, 70.75, 70.77, 70.100, and 70.101, concerning industrialized housing and buildings. The sections are being proposed to clarify the responsibilities of the registrants and to adopt the latest edition of the applicable building codes.

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

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clearer implementation of the statute. The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be minimal.

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

The amendments are proposed under Texas Civil Statutes, Article 5221f-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

Texas Civil Statutes, Article 5221f-1 is affected by these amendments.

#### *§70.50. Manufacturer's and Builder's Monthly Reports.*

(a) The manufacturer shall submit a monthly report to the department[, on a form supplied by the department], of all industrialized housing, buildings, modules, and modular components which

were constructed and to which decals and insignia were applied during the month. **The manufacturer shall keep a copy of the monthly report on file for a minimum of five years.** The report must state the name and address of the industrialized builder to whom the structures, modules, or components were sold, consigned, or shipped. If any such units were produced and stored, the report must state the storage location. The report shall also contain:

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

(5) an identification of the type of structure for which the units are to be used, e.g., single family residence, duplex, **restaurant, equipment shelter, bank building, hazardous storage building,** [two-story motel, 75 units three-story apartment,] etc.;

(6) any other information the department may require [on the form or by separate instruction letter]; and

(7) (No change.)

(b) Each industrialized builder shall submit a monthly report to the department **of all industrialized housing, buildings, modules, and modular components which were installed during the month. A copy of the report shall be kept on file by the industrialized builder for a minimum of five years.** The report [, on a form supplied by the department, which] shall contain:

(1) (No change.)

(2) **identification of the city that inspected the installation, including the permit number, or identification of the third party inspection agency that inspected the installation** [identification of the issuing city and the number and description of any building permit issued to the builder during the month];

(3) (No change.)

[(4) the locations and descriptions of the types of structures for which certificates of occupancy were issued during the month;]

(4)[(5)] any other information the department may require [on the form or by separate instruction letter]; and

(5)[(6)] an indication of zero units if there was no activity for the reporting month.

(c) (No change.)

(d) **Any change in destination (from that reported on the manufacturer's or builder's monthly report) of a module or modular component prior to installation of the module or modular component must be reported to the Department by the manufacturer or builder responsible for the change. The change shall be reported on the manufacturer's or builder's monthly report and shall clearly indicate that this is a change in destination for a previously reported module or modular component. The report shall include the serial or identification number of the unit, the decal or insignia number, the site to which the unit was originally shipped, the new destination information, and the registration number of the industrialized builder responsible for the installation if the unit was transferred or sold to another industrialized builder.**

#### *§70.51. Third Party Inspection Reports.*

(a) (No change.)

(b) **Original** [The] reports must be filed with the department each week or at such other intervals as the department may require pursuant to council instructions.

#### *§70.60. Responsibilities of the Department-Plant Certification.*

(a) Prior to being issued decals or insignia, each manufacturing facility will undergo a certification inspection. [A repre-

sentative of the design review agency must be present during the manufacturer's certification inspection.] The plant certification will be conducted by a department team normally consisting of an engineer and one or more department inspectors or, when designated by the department, third party inspectors. The purpose of the plant certification inspection will be to assure that the compliance control program in the manufacturing facility is capable of producing structures in compliance with the approved design package. The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the inspection team are being located by the plant compliance control program and are being corrected by the plant personnel. The inspection team will work closely with the plant compliance control personnel to assure that the approved design package and compliance control manuals for the facility are clearly understood and are being followed. **If deemed necessary by the certification inspection team, a representative of the design review agency must be present during the inspection.** The plant certification inspection will terminate when the inspection team has fully evaluated all aspects of the manufacturing facility. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line during the certification.

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

[(d) A manufacturing facility which was registered with the department for the construction of modular homes on September 1, 1985, and which had previously been issued a plant certification report, shall not be required to have an additional certification inspection in order to receive decals and insignia.]

#### *§70.61. Responsibilities of the Department—In-plant Inspection.*

(a) The department or TPIA/TPI shall conduct announced and unannounced inspections at the manufacturing facility at reasonable, but varying, intervals to review any and all aspects of the manufacturer's production and compliance control program. In order to determine if the compliance control program is working as set forth in the compliance control manual, inspection of every visible aspect of every module shall normally be made at least at one point **prior to completion of the structural, plumbing, mechanical, or electrical phase. Inspection of system testing shall be made at least once every third inspection** [during the manufacturing process]. It is the manufacturer's responsibility to assure that the inspections are accomplished as outlined in this subsection. The department will determine the frequency of modular component inspections.

(b)-(f) (No change.)

#### *§70.70. Responsibilities of the Registrants—Manufacturer's Design Package.*

(a) The manufacturer's design package must be reviewed and approved in accordance with the following.

(1) The manufacturer must select [either the department or] a council approved design review agency (DRA) to perform all required review and evaluation of plans, designs, specifications, compliance control, and on-site construction documentation, etc. This election shall be made in writing to the commissioner and [, if an agency other than the department is selected, the written election] will state the name, address, and registration number of the design review agency selected.

(2) An approved DRA[, or the department,] shall review all designs, plans, specifications, calculations, compliance control programs, on-site construction documentation or specifications, and

other documents as necessary to assure compliance with the mandatory construction codes in accordance with the interpretations, instructions, and determinations of the council. The reviews are to be performed or directly supervised by the DRA's certified plans reviewers for the discipline (electrical, plumbing, mechanical, structural, building planning, or fire safety) as listed and approved in the agency's organizational chart. A DRA's plans reviewers must be certified pursuant to the criteria established by the council as set forth in §70.22 of this title (relating to the Criteria for Approval of Design Review Agencies) . The department or DRA will obtain from the manufacturer such information as is necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory codes and the sections in this chapter.

(3) (No change.)

(4) The [department or] DRA will signify approval of a drawing, specification, calculation, or any other document in the manufacturer's design package by applying the council's stamp to each page. An alternate council stamp as approved by the council may be used on all designs, plans, specifications, calculations, and other documentation with the exception of the first or cover page and the table of contents or index pages of the design package. The original council stamp with original signature will be required on these pages. The signature on the original council stamp must be the signature of the manager or chief executive officer of the DRA. The manager or chief executive officer of the DRA must be registered in the State of Texas as a professional engineer or architect in accordance with the criteria for approval of DRA's established by the council. [When the department acts as a DRA, the original signature must be the signature of the chief engineer.] The stamp shall not be placed on any designs, plans, or specifications which do not meet the requirements of the applicable mandatory state codes or the requirements of these sections. The manufacturer and the DRA must keep copies of the approved documents. The DRA must keep a copy on file of all approved documents deleted or superseded from a design package for a minimum of five years. The manufacturer must make a copy available to the person performing in-plant inspections. A DRA will forward one approved copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.

(5) Upon adoption of a new edition of the Uniform Building Code, [and] the Standard Building Code, **and the National Electrical Code** in §70.100 of this title (relating to Mandatory State Codes), approvals dated before the effective date of the adoption are no longer valid for industrialized housing, buildings, modules, and modular components constructed after the effective date of adoption. Manufacturers will be notified of the change in code editions 180 days before the effective date of the change. Manufacturers who wish to continue building to previously approved documents must resubmit these documents to their DRA for review and approval to the new code editions. Approval of these documents will be evidenced by application of a new approval date and the council's stamp of approval to each document. The manufacturer may make the transition from current code edition to new code edition in any of the following ways.

(A) The approval date on all documents in the manufacturer's design package will be on or after the effective date of adoption of the new edition of the Uniform Building Code, [and] the Standard Building Code, **and the National Electrical Code.**

(B) The manufacturer may transition approval of documents in his design package 180 days prior to the effective date of adoption of the new edition of the Uniform Building Code, [and] the Standard Building Code, **and the National Electrical Code.** The manufacturer must notify the department of their intent to do so. All documents approved within the 180 day transition period must be



approved to both the current and the new editions of the Uniform Building Code group and the Standard Building Code group or both.

(C) (No change.)

(6) **A** [The department (when acting as a DRA) or a DRA may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of the withdrawal of the approval shall be in writing and shall set forth the reasons for the withdrawal. Any withdrawal of approval shall have prospective effect only, except for life safety items.

(7)-(8) (No change.)

(b)-(f) (No change.)

*§70.73. Responsibilities of the Registrants–Building Site Inspections.*

(a) (No change.)

(b) When the building site is outside a municipality, or within a municipality which has no building department or agency, a [the department or] third party **inspector** [inspectors] will perform the required inspections. The on-site inspection is normally accomplished in three phases: site preparation, set inspection, and final inspection. The builder is responsible for scheduling each phase of the inspection with the inspecting agency. Additional inspections will be scheduled as required for larger structures and to correct discrepancies. [When the department performs the inspection, the builder is responsible for assuring that the request for an on-site inspection, on the form supplied by the department, and the fee in accordance with §70.80 (relating to Commission Fees) arrive at the department's Austin office at least ten working days prior to the first requested inspection date.] If a council approved third party inspector is approved by the department and completes the inspection, fees may be paid directly to the third party inspector. The third party inspector must notify the department of the time, date, and location of the inspection, at least three working days prior to the inspection. The industrialized builder may utilize **different third party inspection agencies for different projects, but may not change the inspection agency for a project once started without the written approval of the department.** [the services of the department on one or more projects and utilize third party inspectors on other projects; however, the election may not be changed once made for a particular project at the building site except with written approval of the department.]

(c) (No change.)

(d) If an inspector finds a structure, or any part thereof, at the building site to be in violation of the approved design package and/or the unique on-site plans and specifications, the inspector shall immediately post a deviation notice and notify the industrialized builder. The industrialized builder **is responsible for assuring that all deviations are corrected and inspected prior to occupation of the building.** [, after making corrections as necessary to bring the unit into compliance, shall request an inspection, either by the commissioner or the on-site inspector. If the deviation is not corrected, a certificate of occupancy shall not be issued.]

[(e) If a structure, or any part thereof, is found by the inspector at the building site to be in violation of the approved design package or the on-site construction documentation, the inspector shall immediately post a deviation notice and notify the industrialized builder. The industrialized builder, after making corrections as necessary to bring the unit into compliance, shall request an inspection. If the deviation is not corrected, a certificate of occupancy shall not be issued.]

(e)[(f)] The **industrialized** builder shall not permit occupancy of a structure until a successful final inspection has been

completed and a certificate of occupancy issued. **The industrialized builder shall keep a copy of the inspection report for the site inspection in the files for a minimum of five years.** [The department will issue certificates of occupancy for buildings located outside a municipality that regulates on-site construction.]

[(g) The owner shall post the certificate of occupancy in a conspicuous place on the premises of an industrialized building. The certificate of occupancy may be suspended or revoked, in writing, whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of the mandatory codes, the Industrialized Housing and Buildings Act (the Act) or any rule, regulation, or administrative order made or issued by the commissioner in, or pursuant to this chapter, or any decisions, actions, or interpretations of the council.]

*§70.75. Responsibilities of the Registrants–Permit/Owner Information.*

(a) **The manufacturer shall provide the industrialized builder with the following information:**

(1) **the name, location, and address of the manufacturer of the building;**

(2) **the location of the decal(s) or insignia on the modules or modular components;**

(3) **a description of the location of the data plate and explanation of the information thereon;**

(4) **a set of approved plans as necessary to obtain a building permit; and**

(5) **the floor plan of the building and schematic drawings of the plumbing, electrical, and heating/ventilation systems for the owner of the building.**

(b)[(a)] The industrialized builder shall provide the purchaser (owner) of any industrialized house or building the following information:

(1) the name, location, and the address of the manufacturer and industrialized builder;

(2) a description of the location of the data plate and explanation of the information thereon;

(3) the floor plan of the **building and schematic drawings of the plumbing, electrical, and heating/ventilation systems** [dwelling unit or structure as appropriate];

(4) **the location of the decal(s) or insignia on the module or modular components** [schematic drawings of the plumbing, electrical, and heating/ventilation systems];

(5) a site plan showing the on-site location of all utilities and utility taps.

(c)[(b)] The builder must have written proof that the information in subsection (b) [(a)] of this section was delivered to the purchaser (owner) and keep this proof in the industrialized builder's files for a minimum of two years.

*§70.77. Responsibilities of the Registrants–Decals and Insignia.*

(a) Decals are used for module certification and insignia are used for modular component certification. The department will issue decals and insignia to the manufacturer on application and payment of the fee following certification of the manufacturing facility in accordance with §70.60 of this title (relating to Responsibilities of the Department– Plant Certifications). **It is the manufacturer's responsibility to assure that a certification inspection has been accomplished as outlined in §70.60 of this title.** Each module or

modular component of industrialized housing or buildings shall have the decal or insignia affixed thereto before leaving the manufacturing facility. **It is the manufacturer's responsibility to assure that the in-plant inspection has been performed as outlined in §70.61 of this title (relating to Responsibilities of the Department-In-plant Inspection) prior to affixing the decal or insignia.** The decal or insignia shall be placed in a visible location as set forth in the approved design package and in the on-site construction documentation and shall be permanently attached so that it cannot be removed without destruction.

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

*§70.100. Mandatory State Codes.* All industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes and their appendices:

(1) National Fire Protection Association-National Electrical Code, **1996** [1990] Edition; and

(2) either:

(A) **the** [International Conference of Building Officials-]Uniform Building Code, **1994** [1991] Edition, **published by the International Conference of Building Officials** [excluding Appendix Chapter 53, Energy Conservation in New Building Construction]; **the** Uniform Mechanical Code, **1994** [1991] Edition, **published by the International Conference of Building Officials**; and **the International Plumbing Code, 1995 Edition, published by the Building Officials and Code Administrators International and the International Conference of Building Officials** [Uniform Plumbing Code, 1991 Edition]; or

(B) **the** [Southern Building Code Congress International, Inc.-] Standard Building Code, **1994** [1991] Edition, **published by the Southern Building Code Congress International** [excluding Appendix E, Energy Conservation]; **the** Standard Plumbing Code, **1994** [1991] Edition, **published by the Southern Building Code Congress International**; **the** Standard Mechanical Code, **1994** [1991] Edition, **published by the Southern Building Code Congress International**; and **the** Standard Gas Code, **1994** [1991] Edition, **published by the Southern Building Code Congress International.** [; and

[(3) either:

[(A) for residential buildings, the CABO Model Energy Code, 1993 edition; or

[(B) For commercial buildings and high-rise residential, ASHRAE/IES 90.1-89, Energy Efficient Design of New Buildings Except New Low-Rise Residential Buildings.]

*§70.101. Amendments to Mandatory State Codes.*

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

(c) The **1996** [1990] Edition of the National Electrical Code shall be amended as follows.

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

(d) **The 1994 edition of the Uniform Building Code shall be amended as follows.**

(1) Amend Appendix Chapter 13 as follows.

(A) Amend §1302.2 to read: "In order to comply with the purpose of this appendix, *residential* buildings shall be designed to comply with the requirements of the *Model Energy*

*Code* promulgated jointly by the International Conference of Building Officials, the Southern Building Code Congress International, the Building Officials and Code Administrators International, and the National Conference of States on Building Codes and Standards, dated 1993."

(B) Add §1302.3 to read: "In order to comply with the purpose of this appendix, commercial buildings and high-rise residential buildings shall be designed to comply with the requirements of ASHRAE/IES 90.1/89, Energy Efficient Design of New Buildings Except New Low-Rise Residential Buildings."

(2) Accessibility requirements for the physically handicapped shall be amended as follows.

(A) Delete Chapter 11 and Appendix Chapter 11 and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21(a) and(c) relating to Registration-Subject Buildings and Facilities, dated June 1, 1994.

(B) Wherever reference elsewhere in the code is made to the Council of American Building Officials (CABO)/American National Standards Institute (ANSI) A117.1 (CABO/ANSI A117.1), the Texas Accessibility Standards (TAS) shall be substituted.

(3) Amend Appendix Chapter 3, Division III, §332 to read: "Buildings regulated by this division shall be designed and constructed to comply with the requirements of the Council of American Building Officials *One and Two Family Dwelling Code, 1995* Edition (as it applies to detached one- and two-family dwellings), promulgated jointly by the International Conference of Building Officials, the Building Officials and Code Administrators International and the Southern Building Code Congress International."

(4) Amend §707.3 by adding the following text to the exceptions: "3. This section shall not apply to cellulose insulation regulated by the Consumer Protection Safety Commission as provided in CPSC 16 CFR, Parts 1209 and 1404."

(e) The 1994 edition of the Standard Building Code shall be amended as follows.

(1) Delete Appendix E, Energy Conservation and replace with the following: All residential buildings shall be designed to comply with the requirements of the *Model Energy Code* promulgated jointly by the International Conference of Building Officials, the Southern Building Code Congress International, the Building Officials and Code Administrators International, and the National Conference of States on Building Codes and Standards, dated 1993. All commercial buildings and high-rise residential buildings shall be designed to comply with the requirements of ASHRAE/IES 90.1/89, Energy Efficient Design of New Buildings Except New Low-Rise Residential Buildings.

(2) Accessibility requirements for the physically handicapped shall be amended as follows.

(A) Delete Chapter 11 and Appendix I and replace with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Article 9102, Texas Civil Statutes, dated April 1, 1994. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of

the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68, §68.21(a) and (c) relating to Registration-Subject Buildings and Facilities, dated June 1, 1994.

(B) Wherever reference elsewhere in the code is made to the Council of American Building Officials (CABO)/American National Standards Institute (ANSI) A117.1 (CABO/ANSI A117.1), the Texas Accessibility Standards (TAS) shall be substituted.

(3) Revise Chapter 35, Reference Standards, §3502 as follows.

(A) Revise "CABO One and Two Family Dwelling Code, 1989 (1990 amendments)" to read "CABO One and Two Family Dwelling Code, 1995 edition".

(B) Delete "CABO/ANSI A117.1-92, Accessible and Usable Building, and Facilities.

(C) Add Texas Accessibility Standards (TAS), dated April 1, 1994.

(4) Amend §708.8 Cellulose Fiber Thermal Insulation by deleting the existing text and replacing with the following: "The provisions of 708 shall not apply to cellulose insulation regulated by the Consumer Product Safety Commission as provided in CPSC 16 CFR, parts 1209 and 1404."

(5) Amend §3502, Referenced Standards, by deleting the following: "ASTM C 739-91, Cellulosic Fiber (Wood-Based) Loose-Fill Thermal Insulation 708.8."

This agency hereby certifies that the proposal 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 26, 1996.

TRD-9604213 Jack W. Garison  
Executive Director  
Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 6, 1996

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

## TITLE 22. EXAMINING BOARDS

### Part I. Texas Board of Architectural Examiners

#### Chapter 1. Architecture

#### Subchapter B. Registration

##### • 22 TAC §1.25

The Texas Board of Architectural Examiners proposes an amendment to §1. 25, regarding Processing, deleting the August 1 application deadline for the December examination as there will not be a December examination.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section is in effect, there will be no public benefit anticipated. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

##### §1.25. Processing.

(a) All applications and supporting documentation for examinations shall be submitted to the Board through NCARB, no later than [the following dates:

[(1) June paper and pencil administered A.R.E.:] February 1. [;]

[(2) December administered graphic site and building design divisions of the A.R.E.: August 1.]

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

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

Issued in Austin, Texas, on March 26, 1996.

TRD-9604256 Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-8535

## Subchapter H. Rules of Conduct

### • 22 TAC §1.143

The Texas Board of Architectural Examiners proposes an amendment to §1. 143, regarding Grounds for Discipline concerning compliance with the Texas Civil Statutes, Architectural Barriers Act, §9102, whereas a professional registered with this Board, who is not in compliance with the mentioned statute, is subject to disciplinary action.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be architectural compliance with the Texas Civil Statutes, Architectural Barriers Act, §9102 and more accountability from architects concerning architectural barriers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§1.143. Grounds for Discipline. The Board may deny an applicant's eligibility; reprimand or place on probation an architect; and suspend or revoke an architect's certificate of registration upon proof satisfactory to the Board the applicant or architect is guilty of:

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

(5) mental incompetence;[.]

(6) Failure to comply with the Architectural Barriers Act, Texas Civil Statutes, §9102.

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 26, 1996.

TRD-9604255 Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-8535



## Chapter 3. Landscape Architecture

### Subchapter H. Rules of Conduct

#### • 22 TAC §3.143

The Texas Board of Architectural Examiners proposes an amendment to §3.143, regarding Grounds For Discipline concerning compliance with the Texas Accessibility Standards, 16 TAC §68, whereas a professional registered with this Board, who is not in compliance with the mentioned statute, is subject to disciplinary action.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be landscape architectural compliance with the Texas Accessibility Standards, 16 TAC §68, and more accountability from landscape architects concerning architectural barriers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

*§3.143. Grounds for Discipline.* The Board may deny an applicant's eligibility; reprimand or place on probation a landscape architect; and suspend or revoke a landscape architect's certificate of registration upon proof satisfactory to the Board the applicant or landscape architect is guilty of:

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

(5) mental incompetence;[.]

**(6) Failure to comply with the Texas Accessibility Standards, 16 Texas Administrative Code Chapter 68, per Texas Department of Licensing and Regulation.**

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 26, 1996.

TRD-9604257 Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-8535



## Chapter 5. Interior Design

### Subchapter H. Rules of Conduct

#### • 22 TAC §5.153

The Texas Board of Architectural Examiners proposes an amendment to §5.153, regarding Grounds For Discipline concerning compliance with the Texas Civil Statutes, Architectural Barriers Act, §9102, whereas a professional registered with this Board, who is not in compliance with the above mentioned statute, is subject to disciplinary action.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be architectural compliance with the Texas Civil Statutes, Architectural Barriers Act, §9102 and more accountability from interior designers concerning architectural barriers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

*§5.153. Grounds for Discipline.* The Board may deny an applicant's eligibility; reprimand or place on probation an interior designer; and suspend or revoke an interior designer's certificate of registration upon proof satisfactory to the Board the applicant or interior designer is guilty of:

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

(3) mental incompetence;[.]

**(4) Failure to comply with the Texas Civil Statutes, Architectural Barriers Act, §9102.**

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 26, 1996.

TRD-9604258 Cathy L. Hendricks, ASID/IIDA  
Executive Director  
Texas Board of Architectural Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-8535



## Part III. Texas Board of Chiropractic Examiners

### Chapter 76. Investigations

#### • 22 TAC §76.2

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

The Texas Board of Chiropractic Examiners proposes the repeal of §76.2, concerning confidentiality in the complaint and investigation process. The repeal is to insure that no one is confused that complaint information is confidential.

The sections are repealed to comply with Senate Bill 673 (Article 4512b, §24(a)) adopted by the 74th Legislature and effective June 18, 1995. Senate Bill 673 requires that the Texas Board of Chiropractic Examiners review and amend, in conformance with this Act, all rules adopted by the Board on or after September 1, 1994.

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

Ms. Kent also has determined there will be no public benefit or costs as a result of repealing the affected section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Patte Kent, Executive Director, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The repeal is proposed under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate rules and regulations as deemed necessary.

The following is the statute that is affected by this repeal: Texas Civil Statutes, Article 4512b.

#### §76.2. Confidentiality.

This agency hereby certifies that the proposal 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 26, 1996.

TRD-9604204 Patte B. Kent  
Executive Director  
Texas Board of Chiropractic Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-6700

## Part IX. Texas State Board of Medical Examiners

### Chapter 173. Applications

#### • 22 TAC §173.1

The Texas State Board of Medical Examiners proposes an amendment to §173.1, regarding the board's physical address.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the board's new address. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §2.09 is affected by this amendment.

#### §173.1. Applications.

(a) (No change.)

(b) These forms may be examined and copies may be obtained at the offices of the Texas State Board of Medical Examiners, **333 Guadalupe, Tower 3, Suite 610, Austin, Texas** [1812 Centre Creek Drive, Suite 300, Austin, Texas].

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 26, 1996.

TRD-9604235 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-7016

### Chapter 179. Investigation File

#### • 22 TAC §179.6

The Texas State Board of Medical Examiners proposes an amendment to §179.6, regarding the board's address.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the board's new address. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §5.05 is affected by this amendment.

#### §179.6. Reporting Medical Professional Liability Claims.

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

(i) The reporting form shall be as follows.

Figure 1: 22 TAC §179.6(i)

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 26, 1996.

TRD-9604236 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-7016

### Chapter 180. Rehabilitation Orders

#### • 22 TAC §180.1

The Texas State Board of Medical Examiners proposes new §180.1, relating to rehabilitation orders. As a result of statutory changes made during the 74th Legislature, this rule is promulgated to promote efficient administration of the provisions of the Medical Practice Act, §3.081.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will be minimal fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated will be to promote the efficient administration of the provisions of the Medical Practice Act, §3.081. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.081, is affected by this new section.

#### *§180.1. Rehabilitation Orders.*

(a) Purpose. This chapter is promulgated to promote the efficient administration of the provisions of the Medical Practice Act, §3.081 (relating to Rehabilitation Orders).

(b) Addiction from Treatment. The determination as to whether intemperate use of drugs or alcohol was a direct result of habituation or addiction caused by medical care or treatment by another physician shall be made by the board based on medical records and/or credible testimony from health-care practitioners. In the event that medical records and credible testimony are unavailable or are inconclusive regarding whether intemperate use of alcohol or drugs was a direct result of habituation or addiction caused by medical care or treatment by another physician, the board shall exercise sound discretion in making a determination based on available evidence and may conclude that intemperate use of alcohol or drugs was not caused by such medical care or treatment.

(c) Self-reports. Self-reports of intemperate use of drugs or alcohol by licensees or licensure applicants shall be made through one or more of the following methods prior to the board opening an investigation in regard to the individual for alleged intemperate use of drugs or alcohol:

(1) a hand-written or typed statement submitted to the board or board staff by mail, messenger, telefacsimile transmission, or hand-delivery which has been signed by the licensee or licensure applicant and may include responses provided as part of an application for a license or a writing submitted for purposes of licensure renewal; or

(2) a hand-written or typed statement submitted to the board or board staff by mail, messenger, telefacsimile transmission, or hand-delivery which has been signed by an authorized agent of the licensee or licensure applicant with the prior approval of the licensee or licensure applicant.

(d) Contents of Self-report. A self-report of intemperate use of drugs or alcohol shall at a minimum contain the approximate dates of intemperate use, the extent of intemperate use, the substance or substances used, the method or methods of ingestion, and any history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received.

(e) Preexisting Conditions. The determination as to whether a mental or physical condition predated and caused intemperate use of alcohol or drugs shall be made by the board based on medical records and/or credible testimony from health-care practitioners. In the event that medical records and credible testimony are unavailable or are inconclusive regarding whether a mental or physical

condition predated and caused intemperate use of alcohol or drugs, the board shall exercise sound discretion in making a determination based on available evidence and may conclude that intemperate use of alcohol or drugs was not caused by a preexisting mental or physical condition.

(f) Confidentiality. Consideration of proposed agreed rehabilitation orders shall be conducted so as to keep the identity of the licensee or licensure applicant confidential. Confidentiality may be preserved through one or more of the following:

(1) confidential informal settlement conferences/show compliance proceedings;

(2) confidential modification and termination requests and proceedings;

(3) executive sessions by the board and board committee; and/or,

(4) redaction of identifying information when such orders are considered in open session.

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 26, 1996.

TRD-9604238      Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-7016

## Chapter 188. Complaint Procedure Notification

### • 22 TAC §188.1

The Texas State Board of Medical Examiners proposes an amendment to §188.1, regarding the board's address.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the board's new address. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §2.09(s) is affected by this amendment.

#### *§188.1. Complaint Procedure Notification.*

(a) (No change.)

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules and the Act, §2.09(s)(2):

#### NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants and acupuncturists, may be reported for investi-

gation at the following address:  
Texas State Board of Medical Examiners  
Attention: Investigations  
**333 Guadalupe, Tower 3, Suite 610**  
**P.O. Box 2018, MC-263**  
**Austin, Texas 78768-2018**

[1812 Centre Creek Drive, Suite 300  
[P.O. Box 149134  
[Austin, Texas 78714-9134]

Assistance in filing a complaint is available by calling the following telephone number:  
1-800-201-9353

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules and the Act, §2.09(s)(2):

**AVISO SOBRE QUEJAS**

Se pueden presentar quejas acerca de medicos, asi tambien como de otras personas autorizadas y registradas por la Junta de Examinadores Medicos del Estado de Texas (Texas State Board of Medical Examiners), incluyendo a ayudantes medicos y acupunturistas, para su investigacion, en la siguiente direccion:

Texas State Board of Medical Examiners  
Attention: Investigations  
**333 Guadalupe, Tower 3, Suite 610**  
**P.O. Box 2018, MC-263**  
**Austin, Texas 78768-2018**

[1812 Centre Creek Drive, Suite 300  
[P.O. Box 149134  
[Austin, Texas 78714-9134]

Se puede obtener ayuda para presentar una queja llamando al siguiente numero telefonico:  
1-800-201-9353

(d) Following are samples of the type print references in subsection (a) of this section.

Figure 1: 22 TAC §188.1(d)

Figure 2: 22 TAC §188.1(d)

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 26, 1996.

TRD-9604237 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-7016



## Part XVI. Texas Board of Physical Therapy Examiners

### Chapter 329. Licensing Procedure

#### • 22 TAC §329.2

*(Editor's Note: The following proposed amendment was inadvertently omitted from the February 27, 1996, issue of the Texas Register. The Texas Board of Physical Therapy Examiners submitted the notice on March 16, 1996.)*

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.2, concerning License by Examination. This amended section allows for the implementation of a computer based examination. The examination can be taken at the applicants convenience on a daily basis.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the ability for applicants to take the board approved examination on a daily basis instead of only three times a year. This will reduce the time an applicant has to wait to receive a permanent license.

Comments on the proposed rule may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

#### §329.2. License by Examination.

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

(f) Examinations. The board will administer **all** [three] written examinations [annually] Oral and/or practical examinations will be scheduled as required at the discretion of the board. Use of dictionaries, translators, or any other supportive information will not be permitted.

(g) Examination score requirements. All [written] examinations will be prepared by a board-approved examination service. The board-approved examination service is Professional Examination Service (PES). All score reporting to the board will be done by the PES Interstate Reporting Service. For any examinations given on or after January 1, 1993, a passing score will be determined by the board for each examination. For all examinations given prior to January 1, 1993, a passing score shall be 1.5 standard deviation below the nationwide mean or higher. The applicant will be notified in writing of the scores and their pass or fail result. Upon receipt of notification of failure, the applicant is immediately ineligible to practice.

(h)-(k) (No change.)

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

Issued in Austin, Texas, on February 16, 1996.

TRD-9602277 John Maline  
Executive Director  
Executive Council of Physical Therapy and Occupational Therapy Examiners

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 305-6900



## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 3. Life, Accident, and Health Insurance and Annuities

##### Subchapter F. Group Health Insurance Mandatory Conversion Privilege

#### • 28 TAC §§3.502-3.520

The Texas Department of Insurance proposes amendments to §§3.502-3.512 and new §§3.513-3.520, concerning Group Health Insurance Mandatory Conversion Privileges. The amendments and new sections implement the provisions of the Insurance Code, Article 3.51-6, §1(d)(3)(A)(i), as amended by Acts 1995, 74th Legislature, in House Bill 369. The proposed amendments and new sections are necessary to implement this legislation which requires that converted policies shall provide similar coverage and benefits as provided under the group policy or plan.

The purpose of this subchapter is to address requirements and set minimum standards for benefits for any conversion policy issued in accordance with a conversion privilege provided under a group health benefit plan. Under Insurance Code, Article 3.51-6, §1(d)(3), a conversion privilege is required with respect to any employee, member, or dependent whose insurance under a group policy has been terminated for any reason (except involuntary termination for cause), including discontinuance of the group policy in its entirety or with respect to any insured class, and who has been continuously insured under the group policy (and under any policy providing similar benefits which it replaces) for at least three months immediately prior to termination. A conversion may be provided either through an individual conversion policy or through establishment of a group conversion trust as authorized under Insurance Code, Article 3.51-6, §1(a)(5). These amended and new sections are necessary to provide the requirements for complying with the provisions of amended Article 3.51-6, §1(d)(3), which requires that converted policies shall provide similar coverage and benefits as provided under the group policy or plan. These sections set out the requirements for complying with the provisions of amended Article 3.51-6, §1(d)(3)(A)(i) which requires a conversion privilege for any employee, member, or dependent whose insurance under a group policy has been terminated. Section 3.502 pertains to definitions used in the subchapter. Section 3.503 describes the forms which are adopted and incorporated by reference. Section 3.504 describes eligibility for mandatory group conversion and continuation privileges. Section 3.505 sets out mandatory conversion or continuation options for insurers and employees, members, or dependents eligible for conversion or continuation. Section 3.506 provides for notification requirements of insurers and employer/group policyholders. Section 3.507 sets election and effective dates. Section 3.508 pertains to the conversion premium. Section 3.509 pertains to the continuation premium. Section 3.510 sets minimum standards for benefits for other conversion policies. Section 3.511 describes minimum standards for conversion policy provisions and requirements for conversion policies. Section 3.512 provides lifetime maximums and benefits calculations. Section 3.513 sets minimum standards for renewability of conversion policies. Section 3.514 provides for minimum standards for continuation of coverage. Section 3.515 describes prototype forms and required conversion benefit packages which are adopted and incorporated by reference. Section 3.516 describes filing requirements. Section 3.517 sets language readability requirements. Section 3.518 provides for mandatory group policy provisions. Section 3.519 sets an effective date. Section 3.520 is an appendix containing form and figure numbers and their descriptions which are adopted and incorporated by reference. These amendments and new sections are proposed as part of Title 28, Part 1, Chapter 3, Subchapter F., relating to Group Health Insurance Mandatory Conversion.

Tyrette P. Hamilton, Deputy Commissioner, Life/Health Group, 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. There will be no measurable effect on local employment or local economy.

Ms. Hamilton 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 is the benefit of increased availability of conversion and/or continuation for insured persons, and better information presented to insured persons so they can make informed decisions about their conversion/continuation options and the similar coverage and benefits as provided under the group policy or plan. There is no anticipated difference in cost of compliance between small and large businesses. Ms. Hamilton estimates that for the first year that the sections are in effect, the cost to health insurance companies required to comply with the proposal will range from \$25,000 to \$300,000 due to initial transition and the filing of revised forms. The estimated costs to health insurance companies for each of the remaining years of the first five-year period the proposed sections are in effect will range from \$1,000 to \$150,000 annually. These amounts are estimated on a per company basis. The assumptions on which these costs have been estimated may change as the department receives data during the comment period.

Comments on this proposal must be submitted in writing within 30 days after publication of this section in the *Texas Register* to Alicia M. Fechtel, General Counsel and Chief Clerk of the Texas Department of Insurance, Mail Code 113-1C, P.O. Box 149104, Austin, Texas 78714-9104, with a copy to Tyrette P. Hamilton, Deputy Commissioner,

Life/Health Group, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Mail Code 106-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The proposed amendments and new sections are proposed pursuant to the Insurance Code, Articles 1.03A, 3.51-6, and 3.42. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the department. Article 3.51-6, §1(d)(3) contains requirements for conversion or continuation privileges for the policies covered by that section. Article 3.51-6, §5, authorizes the department to issue rules and regulations as may be necessary to carry out the various provisions of the article. Article 3.42 contains filing requirements for policies, contracts, certificates, and forms subject to that statute and specifically authorizes the department to adopt reasonable rules and regulations as necessary to implement and accomplish the provisions of that statute.

The proposed amendments and new sections affect Insurance Code, Articles 1.03A, 3.51-6, and 3.42.

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

Commissioner—The Commissioner of Insurance.

**Conversion Benefit Packages—Promulgated forms that must be used as required in §3.505 of this title (relating to Mandatory Conversion or Continuation Options) and §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages).**

Immediate or Immediately—Within five working days of the [application] notice or termination.

Lifetime maximum—The maximum benefit payable per covered person's lifetime, as computed in §3.512 [3.508] of this title (relating to **Lifetime Maximums and Benefit Calculations** [Provisions of the Converted Policy]).

Prototype forms [policies]—Those forms [policies] promulgated by the Department and adopted by reference in §3.503 and §3.515, required in §§3.505 of this title (relating to **Mandatory Conversion or Continuation Options**), 3.515, and 3.518 of this title (relating to **Mandatory Group Policy Provisions**), and found in §3.520 of this title (relating to **Appendix**) [found in the appendix to Chapter 26 of this title (relating to **Small Employer Health Insurance Regulations**)].

Renewal date—For each [small employer] health benefit plan, the earlier of the date (if any) specified in such plan (contract) for renewal; the policy anniversary date; or the date on which the [small employer's] plan is changed in any way.

*§3.503. Forms Adopted and Incorporated by Reference [Conversion].* **The forms relating to the conversion prototype forms and the certification form, listed in §3.520 of this title (relating to Appendix), are adopted and incorporated by reference and have been filed with the Office of the Secretary of State. The forms can be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P.O. Box 149104, Austin, Texas 78714-9104, or from the Department's Life/Health Group, MC 106-1A.**

[(a) Issuance of a converted policy shall be subject to the conditions and circumstances set forth in subsections (b)-(g) of this section.

[(b) Election of conversion is discussed in this subsection.

[(1) The insurer shall first offer to each employee, member or dependent that is eligible for conversion a conversion policy with the same coverage and benefits as the terminating coverage provided under the group policy without evidence of insurability.



[(2) Upon written rejection of the same coverage and benefits, any employee, member, or dependent that is eligible for conversion may elect lesser coverage. The insurer shall offer a lesser coverage conversion policy in accordance with the minimum standards outlined in §3.507 of this title (relating to Minimum Benefits).

[(3) Any employee, member, or dependent that is eligible for conversion may choose continuation under the group policy in lieu of a conversion policy in accordance with the provisions outlined in §3.511 of this title (relating to Continuation).

[(4) Insureds entitled to an extension of benefits by reason of total disability upon policy termination in accordance with Insurance Code, Article 3.51-6A, shall be entitled to a conversion policy at the end of the extension of benefit period in accordance with all requirements of this subchapter.

[(5) Written application for the converted policy shall be made, and the first premium paid to the insurer, not later than 31 days after the termination of insurance under the group policy, as described in §3.501 of this title (relating to Purpose and Scope).

[(6) A conversion privilege shall not be required for any person under the following circumstances under Insurance Code, Article 3.51-6, §1(d)(3)(A)(i) and (ii):

[(A) termination of the group coverage occurred because the person failed to pay any required premium;

[(B) any discontinued group coverage was replaced by similar group coverage within 31 days;

[(C) the person is or could be covered by Medicare;

[(D) the person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy, or hospital or medical service subscriber contract or medical practice or other prepayment plan, or by any other plan or program;

[(E) the person is eligible for similar benefits whether or not covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis;

[(F) similar benefits are provided for or available to the person, under the requirements of any state or federal law.

[(c) The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

[(d) The converted policy shall be issued without evidence of insurability.

[(e) The converted policy shall cover the employee or member or any dependents who were covered by the group policy on the date of termination of insurance. A separate converted policy may be issued to cover any dependent.

[(f) In the event coverage would be continued under the group policy on an employee following his or her retirement prior to the time he or she is or could be covered by Medicare, he or she may elect, in lieu of continuation of the group insurance, to have the same conversion rights that would apply if his insurance terminated at retirement by reason of termination of employment or membership in the group.

[(g) Subject to the conditions set forth in these sections, the conversion privilege shall also be available:

[(1) to the spouse and dependents of the employee or member upon termination of coverage of the spouse or such dependents, while the employee or member remains insured under the group policy; or

[(2) to a spouse or dependent of the employee or member solely with respect to the spouse or dependent upon termination of coverage under the group policy;

[(3) to certain dependents under Insurance Code, Article 3.51-6, §3B, which requires that each health insurance policy shall include an additional option of continuation for certain dependents if eligibility for coverage ceases under the policy due to the severance of a family relationship, the retirement, or the death of the employee or member of the group. Those additional options are:

[(A) a spouse or dependent qualifying for continuation of coverage under this statute may elect a converted policy rather than the continuation of group insurance;

[(B) if the dependent has elected continuation under Article 3.51-6, §3B, the dependent will again be offered conversion at the end of the maximum continuation period. All conversion requirements outlined in this subchapter will apply to that conversion.

[(4) to any employee, member, or dependent upon the completion of any continuation of coverage provided under The Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law Number 99-272, 100 Stat. 222) and any amendments thereto. The conversion option must be offered by the insurer to the employee, member or dependent prior to the expiration of the COBRA continuation coverage.]

*§3.504. Eligibility for Mandatory Group Conversion and Continuation Privilege [Notification Requirement of Employer/Group Policyholders and Insurers].*

(a) Eligibility. Pursuant to Insurance Code, Article 3.51-6, §1(d)(3), each employee, member or dependent whose coverage under a group policy providing hospital, medical, surgical, or major medical coverage on an expense incurred basis, ceases for any reason shall have the right to conversion or continuation provided:

**(1) the person was continuously covered under the group policy for at least three consecutive months immediately prior to termination (or under any policy providing similar benefits which it replaced); and**

**(2) coverage terminated for any reason except involuntary termination for cause.**

**(b) Ineligibility. A conversion or continuation privilege under Insurance Code, Article 3.51-6, §1(d)(3) shall not be required for any person under the following circumstances:**

**(1) termination of the group coverage occurred because the person failed to pay any required premium;**

**(2) any discontinued group coverage was replaced by similar group coverage within 31 days;**

**(3) the person is or could be covered by Medicare;**

**(4) the person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy, or hospital or medical service subscriber contract, or medical practice plan, or any other prepayment plan or any other plan or program;**

**(5) the person is eligible for similar benefits whether or not covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or**

**(6) similar benefits are provided or available to the person under the requirements of any state or federal law.**

[(a) A notification of the conversion and continuation privileges available under any group accident and health insurance coverage shall be provided to each employee, member or eligible dependent with insurance coverage under a group policy who is affected by the termination of coverage under such policy not less than 30 days before the date upon which the termination or discontinuance of the policy or coverage is to take effect. One exception to the requirement exists where the employer or group policyholder receives notification of such termination fewer than 30 days prior to its effective date. In that event the notice required of the employer or group policyholder to the employees, members, and/or covered dependents shall be immediate notice. This time limit in no way affects or limits the notice requirements specified in the Insurance Code, Article 3.51-6, §3B. In instances where the group policyholder is required to give notice of continuation immediately upon receipt of written notification of an event triggering the election of a continuation option, the statutory time limits shall prevail. The required notice shall be provided in the following format. The prescribed format is mandatory unless otherwise indicated.

[(1) The following information must be provided for conversion options:

[(A) A definition of the basis for conversion. The definition shall incorporate the terms under which the conversion privilege is available, including:

[(i) a description of the option to convert to a policy providing the same benefits and coverages;

[(ii) a description of the option to convert to a lesser coverage including a description of the actual benefits provided.

[(B) The time period during which the employee, member, or dependent may apply for, and pay the first premium toward, a converted policy without having to provide evidence of insurability.

[(C) The actual required premium amount shall be stated for each of the conversion options.

[(D) Instructions on how and to whom payment of the first premium due under the converted policy is to be made shall be included in the notice.

[(E) The effective date of the converted policy, and provisions with respect to its renewability shall be contained in the notice.

[(2) The following information must be provided on continuation options:

[(A) the period of time, following either the termination or the notice of the employee's or eligible dependent's right to elect continuation, during which the employee, member, or eligible dependent may submit written request for continuation;

[(B) the amount of premium or contribution which an employee, member, or eligible dependent electing continuation of coverage must pay to the group policyholder or employer on a monthly basis in advance;

[(C) the date or dates upon which the employee's, member's or eligible dependent's written election of continuation, together with the first contribution required to establish contributions on a monthly basis in advance, must be given to the policyholder or employer;

[(D) the length(s) of time for which continuation is to be effective.

[(3) any additional alternative options-including time frames for notification and the required premium contribution.

[(4) enrollment/Election form and Signature.

[(5) The following notice will appear at the top of the first page:

[(A) "If you have questions regarding your rights for conversion or continuation of your health insurance, contact (insert name of insurance company) at (insert company toll-free telephone number, or other telephone number if no toll-free number is available). If you have additional questions, you may contact the Texas Department of Insurance, toll-free, at (800) 252-3439."

[(B) "Si usted tiene una pregunta sobre sus derechos bajo el proceso de convertir o de continuar el seguro de salud, hable (insert name of insurance company) por el numero (insert company toll-free telephone number, or other telephone number if no toll-free number is available). Si usted necesita mas informacion, se puede comunicar con el Departamento de Seguros de Tejas por el numero gratis (800) 252-3439. Se habla espanol."

[(b) The insurer shall offer the same coverage and benefit option immediately upon termination of coverage under the group policy. The insurer is responsible for the timely offer of the same coverage and benefits option. In order to insure timely offering of the same benefits and coverages, the insurer shall make available the conversion and continuation notice as described in subsection (a)(1)-(5) of this section to the employer/group policyholder. To eliminate duplicate information requirements and insure adequate notification to each affected covered individual, delivery of the mandatory notification to the covered individual within the specified time period by either the insurer or the employer/group policyholder shall satisfy the notification requirements of both the insurer and the employer/group policyholder.

[(c) Such notice as is required by Article 3.51-6, §3C(a) may accompany the notification of the employees covered under a policy or contract regarding the specific date on which discontinuance is to take effect pursuant to the Insurance Code, Article 3.51-6, provided that such notification is designed to give actual notice not only to the employees covered under the policy or contract but also to other members covered Under the policy and eligible dependents of such employees; and further provided that the time restrictions for such notification are no less favorable to any party receiving the notification than those recited in subsections (a) and (b) of this section.]

**§3.505. Mandatory Conversion or Continuation Options [Mandatory Group Policy Provisions].**

**(a) An employee, member, or dependent eligible for conversion or continuation shall have the options as outlined below:**

**(1) For group policies issued, delivered, or renewed prior to June 1, 1996, the insurer shall first offer to each eligible employee, member, or dependent, a conversion policy with the same coverage and benefits as the terminating group coverage. Evidence of insurability shall not be required.**

(2) For group policies issued or delivered on or after June 1, 1996, the insurer shall first offer to each eligible employee, member, or dependent, a conversion policy with coverage and benefits similar to those of the terminating group coverage. Evidence of insurability shall not be required. For the purposes of this subsection, similar coverage and benefits means:

(A) the same coverage and benefits as provided by the terminating group coverage; or

(B) for hospital, surgical, medical, and major medical expense coverage and benefits as provided by the Standard Conversion Policy Benefit Package (Form Number 369SC-BP) (Figure Number 1) prescribed in §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) and found in §3.520 of this title (relating to Appendix). If the group policy from which the employee, member, dependent is converting contains benefits for chemical dependency, mental illness, or out-patient prescription drugs, the insurer shall attach to the converted policy the following riders, which are prescribed in §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) and found in §3.520 of this title (relating to Appendix):  
Alcohol and Drug Abuse Benefit Rider (Form Number 369CONV-ADB) (Figure Number 2);  
Mental Health Benefit Rider (Form Number 369CONV-MHB) (Figure Number 3); or  
Prescription Drug Benefit Rider (Form Number 369CONV-RX) (Figure Number 4).  
Nothing herein shall be construed to require a rider for benefits which were not contained in the group policy.

(C) For in-hospital expense policies, the coverage and benefits as provided by the In-Hospital Conversion Policy Benefit Package (Form Number 369IHC-BP) (Figure Number 5) prescribed in §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) and found in §3.520 of this title (relating to Appendix). If the group policy from which the employee, dependent, or member is converting contains benefits for prescription drugs, the insurer shall attach to the converted policy the following rider, which is prescribed in §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) and found in §3.520 of this title (relating to Appendix):  
Prescription Drug Benefit Rider (Form Number 369CONV-RX) (Figure Number 4).

(3) Upon written rejection of the coverage and benefits described in paragraphs (1) or (2), any employee, member, or dependent eligible for conversion, may elect lesser coverage. For purposes of this subsection, lesser coverage means:

(A) For major medical and hospital, medical, or surgical policies, the coverage and benefits as provided by the Basic Conversion Policy Benefit Package (Form Number 369BC-BP) (Figure Number 6) as prescribed in §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) and found in §3.520 of this title (relating to Appendix).

(B) For in-hospital expense only policies or for policies providing coverage and benefits equivalent to or lesser than those provided by the Small Employer Basic Coverage Benefits Plan promulgated by the Department and found in Figure Numbers 14 or 15 and in 16, 17, and 18 in the Appendix to Chapter 26 of this title (relating to Small Employer Health Insurance Regulations), lesser coverage is the Lesser In-Hospital

Conversion Policy Benefit Package (Form Number 369LIHC-BP) (Figure Number 7) as prescribed in §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) and found in §3.520 of this title (relating to Appendix).

(4) Any eligible employee, member or dependent may choose continuation under the group policy in lieu of a conversion policy. If this option is selected, continuation shall be permitted for a minimum of six months.

(5) In addition to the conversion benefit packages required by this section, an insurer may at its option also offer other conversion benefit plans. The other conversion benefit plans must provide benefits greater than the Minimum Standards for Benefits for Other Conversion Policies, as described in §3.510 of this title (relating to Minimum Standards for Benefits for Other Conversion Policies). Any other conversion plans must be filed with and approved by the Department prior to use.

(b) An insured shall have the option to convert or continue insurance as described in this subchapter, upon completion of any continuation of coverage provided under The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Public Law Number 99-272, 100 stat. 222) and any amendments thereto. The conversion option must be offered by the insurer to the employee, member, or dependent prior to the expiration of the COBRA continuation coverage.

(c) A dependent shall have the option to convert his insurance as described in this subchapter upon completion of any continuation of coverage provided under Insurance Code, Article 3.51-6, §3B.

(d) Insureds entitled to an extension of benefits under Insurance Code, Article 3.51-6A, shall again be entitled to a conversion policy in accordance with all requirements of this subchapter at the end of the extension period. [Every group accident and health policy/certificate required to include the conversion and continuation options addressed in this subchapter must contain language that is the same or similar to the following: The provision for Additional Continuation/Conversion for Certain Dependents as required for use in small employer health benefit plans shall be the same or similar to the language found at Chapter 26 of this title (relating to the Small Employer Prototype Policies Form Number 2055 COP).

#### [CONTINUATION/CONVERSION PROVISIONS

[An Insured Person whose coverage terminates shall have the right to conversion or continuation under the Policy as outlined below. In order to be eligible for this option, the Insured Person must:

[1. have been continuously covered under the Policy for at least three consecutive months prior to termination; and

[2. coverage terminated for any reason other than involuntary termination for cause.

[There is no right of conversion or continuation if:

[1. the termination of coverage occurred because you failed to pay any required premium or any discontinued group coverage was replaced by similar group coverage within 31 days of the discontinuance; or

[2. the Insured Person is or could be covered by Medicare; or

[3. the Insured Person has similar benefits under another group or individual plan whether insured or uninsured;

[4. the Insured Person is eligible for similar benefits under another group plan whether insured or uninsured; or

[5. similar benefits are provided for or available to the Insured Person under any state or federal law.

[Written application and payment of the first premium must be made within 31 days after the date coverage terminates.

[No evidence of insurability is required. Each Insured Person may select one of the following options:

[Option 1. A conversion policy providing the same coverage and

benefits as provided under the group Policy. If this option is selected, lifetime maximums shall be computed from the initial effective date under the Health Benefit Plan; or

[Option 2. A conversion policy with lesser coverage and benefits. If this option is selected, the benefits and premium will be provided in accordance with the minimum standards for conversion policies.

[A conversion policy will be effective on the day after termination of coverage under the Policy. You will be given credit for any satisfaction under the Policy of waiting periods or limitations for any Preexisting Condition.

[Option 3. Continuation of coverage under the Health Benefit Plan. If this option is selected, continuation will be permitted for a maximum of six months. The premium rate will be 102% of the group premium. The premium will be payable in advance to the Employer or group policyholder on a monthly basis. Continuation may not terminate until the earliest of:

- [a. six months after the date the election is made;
- [b. the date you fail to make timely premium payments;
- [c. the date on which you are or could be covered under Medicare;
- [d. the date on which you are covered for similar benefits under another group or individual policy;
- [e. the date on which you are eligible for similar benefits under another group plan;
- [f. the date on which similar benefits are provided for or available to you under any state or federal law.

[(If the Policy terminates in its entirety before the end of the continuation period, your coverage will continue until the time otherwise specified.) OR (If the Policy terminates in its entirety before the end of the continuation period, you may choose to convert your coverage in accordance with Options 1 or 2.)

[Additional Continuation/Conversion for Certain Dependents

[If coverage terminates as the result of an [Employee's] [Member's] death, retirement or divorce, a Dependent's coverage can continue. The Dependent must have been covered under the plan for at least one year, unless the Dependent is an infant under one year of age. Continuation does not require evidence of insurability.

[Continuation is not available when coverage terminates due to any of these circumstances:

- [1. The Policy is canceled or
- [2. The Dependent fails to make timely premium payments. [Continuation ends at the earliest of the date:
  - [1. Three years after the date that coverage would have ended;
  - [2. The Dependent fails to make timely premium payments;
  - [3. The Dependent becomes eligible for coverage under any other group plan providing similar benefits;
  - [4. The Policy is canceled.

[Notification Requirements. The Dependent must notify the Policyholder within 15 days of the Employee's death, retirement, or divorce. The Policyholder will provide written notice to the Dependent of the right to continue coverage and will end the election form, and instructions for premium payment (within five working days). [Within 60 days of the Employee's death, retirement, or divorce, the Dependent must give written notice to the Policyholder of the desire to exercise the right of continuation or the option expires. Coverage remains in effect during the 60-day period provided premium is paid.

[Any Dependent qualifying for continuation of coverage under this provision may elect a converted policy instead of such continuation of group insurance. If the Dependent has elected continuation under this provision, the Dependent will have the option of a conversion coverage at the end of the maximum continuation period. All conversion provisions described in Option 1 and Option 2 will apply.]

### **§3.506. Notification Requirement of Insurers and Employer/Group Policyholders [Conversion Premium].**

**(a) The insurer is responsible for the timely offer of conversion and continuation options and shall make available**

**the conversion and continuation notice as described in subsection (b) of this section.**

**(b) Not less than 30 days before termination or discontinuance, a notification of conversion and continuation privileges available shall be provided to each employee, member, or dependent whose coverage is terminating.**

**(1) In situations where the employer or group policyholder becomes aware that coverage will terminate less than 30 days before actual termination, notification shall be given to the affected employee, member, or dependent immediately.**

**(2) The time limit required by this subsection in no way affects or limits the notice requirements specified in the Insurance Code, Article 3. 51-6, §3B. In instances where the group policyholder is required to give notice of continuation immediately upon receipt of written notification of an event triggering the election of a continuation option, the statutory time limits shall prevail.**

**(c) The notification required in subsection (b) of this section shall be provided in the following format:**

**(1) The notice shall include the following information regarding conversion:**

**(A) an explanation of the criteria which must be met in order to be eligible for conversion as set out in §3.504 of this title (relating to Eligibility for Mandatory Group Conversion and Continuation Privilege);**

**(B) for group policies issued, delivered, or renewed prior to June 1, 1996, a statement of the option to convert to a policy providing the same coverage and benefits to those provided by the preceding group contract, including a description of the actual benefits;**

**(C) for group policies issued or delivered on or after June 1, 1996, a statement of the option to convert to a policy providing coverage and benefits similar to those provided by the preceding group contract, including a description of the actual benefits;**

**(D) a statement of the options to convert to a policy of lesser coverage and benefits, including a description of the actual benefits;**

**(E) the time period allocated for making the election and paying the required premium;**

**(F) the actual required premium amount for each option;**

**(G) instructions on how and to whom the first premium payment is to be made;**

**(H) statement of when the conversion policy will become effective; and**

**(I) a statement of the renewability provisions.**

**(2) The notice shall include the following information regarding continuation:**

**(A) the time period allocated for making the election to continue as prescribed in Insurance Code, Article 3.51-6, §1(d)(3)(B)(ii);**

(B) the premium amount which an employee, member, or dependent electing continuation of coverage must pay to the employer/group policyholder on a monthly basis in advance;

(C) the date on which the employer/group policyholder must receive the employee's, member's, or dependent's written election to continue and the first premium contribution; and

(D) the length of time one may continue coverage.

(3) Additionally, the notice shall include:

(A) other conversion options available, if any, including a description of the actual benefits and required premium;

(B) enrollment/election form and signature; and

(C) the following English/Spanish statement at the end of the notice:

"If you have questions regarding your rights for conversion or continuation of your health insurance, contact (insert name of insurance company) at (insert company toll-free telephone number, or other telephone number if no toll-free number is available). If you have additional questions, you may contact the Texas Department of Insurance, toll-free, at (800) 252-3439."  
"Si usted tiene una pregunta sobre sus derechos bajo el proceso de convertir o de continuar el seguro de salud, hable (insert name of insurance company) por el numero (insert company toll-free telephone number, or other telephone number if no toll-free number is available). Si usted necesita mas informacion, se puede comunicar con el Departamento de Seguros de Tejas por el numero gratis (800) 252-3439. Se habla espanol."

(d) In order to eliminate duplicate information requirements and insure adequate notification to each eligible employee, member, or dependent, delivery of the mandatory notification to each individual within the specified time period by either the insurer or the employer/group policyholder shall satisfy the notification requirements of both the insurer and the employer/group policyholder.

(e) For information purposes, the insurer shall submit the required notice as outlined in this section to the Department's Life/Health Group.

[(a) The premium for any converted policy issued shall be determined as follows:

[(1) in accordance with the insurer's table of premium rates for coverage that was provided under the group policy or plan; and

[(2) based on the type of converted policy and the coverage provided by the converted policy.

[(b) The premium may be based on the age at issue of the conversion policy and the geographic location of each person to be covered and the type of converted policy; however, the premium for the same coverage and benefits under a converted policy may not exceed 200% of the premium determined under subsection (a)(1) and (2) of this section.

[(c) All rates for individual conversion policies must be submitted to the Department in accordance with the requirements of Insurance Code, Article 3.42, and §3.3(d)(5) of this title (relating to Specific Additional Submission Requirements). The Department

may request documentation related to the premium rates and/or actuarial information of any conversion policy as permitted by §3.2(j)(19) of this title (relating to General Submission Requirements).

[(d) Any converted policy providing the same coverage and benefits with a premium rate of 200% of the premium determined under subsection (a)(1) and (2) of this section shall require actuarial data to substantiate the rate. The premium charged for converted policies must be determined using sound actuarial principles and the relationship of benefits to premiums paid must be reasonable, subject to the maximum 200% cap.]

#### *§3.507. Election and Effective Dates [Minimum Benefits].*

(a) An employee, member, or dependent electing conversion must make written election for the conversion policy and pay the first premium to the insurer not later than 31 days after the termination of insurance under the group policy. The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

(b) An employee, member, or dependent electing continuation must make a written election and pay the first premium to the employer/group policyholder not later than 31 days after the later of the date of the termination of insurance under the group policy or the date the employee is given notice as required by §3.506 of this title (relating to Notification Requirement of Insurers and Employer/Group Policy Holder). Subsequent premiums shall be payable in advance to the employer/group policyholder on a monthly basis.

(c) Each employee, member, or dependent shall have the right to elect continuation or conversion, and such election shall not be contingent upon an identical election of any other family member.

[(a) An insurer shall not be required to issue a converted policy which provides benefits in excess of those provided under the group policy from which the conversion is being made. However, an insurer must first offer to an employee or member or dependent, coverage which has the same coverage and benefits as the coverage provided under the terminating group coverage. Any employee or member or dependent may elect lesser coverage as outlined in paragraphs (1)-(3) of this subsection.

[(1) Each insurer shall make available to any employee, member, or dependent electing lesser coverage, a choice among the three plans which will afford lesser coverage: Preventive and Primary Plan, In-Hospital Plan, and the Standard Plan (as defined in Insurance Code, Articles 26.42-26.50, and Chapter 26, §26.14 of this title (relating to Coverage)) establishing promulgated benefits for small employer plans.

[(2) An insurer shall not be required to offer the Standard Plan to any employee, member, or dependent converting from a small employer In-Hospital Plan or Preventive and Primary Plan.

[(3) In instances of individuals electing lesser coverage conversion from a small employer Preventive and Primary Plan, the policy year maximum benefits defined in Chapter 26, §26.14 of this title (relating to Coverage) for Preventive and Primary Plans shall be reduced by 25% in order to accomplish a lesser coverage option (Reduced Preventive and Primary Plan).

[(b) The insurer may, at its option, also offer alternative conversion plans (Alternative Plan-Higher Option) in addition to those required by this section which provide benefits greater than the minimum standards defined for conversion policies. Any Alternative Plan-Higher Option must be approved by the Department prior to use.]

*§3.508. Conversion Premium [Provisions of the Converted Policy].*

(a) The initial premium at the time of conversion for any converted policy issued shall be determined as follows:

(1) in accordance with the insurer's table of premium rates for coverage that was provided under the group policy or plan; and

(2) based on the type of converted policy and the coverage provided by the converted policy.

(b) The initial premium at the time of conversion may be based on the age at issue of the conversion policy and the geographic location of each person to be covered and the type of converted policy; however, the premium for the same coverage and benefits under a converted policy may not exceed 200% of the premium determined under subsection (a)(1) and (2) of this section.

(c) For all policies converted for 12 months or more, renewal premiums will be based on the pooled experience of all such policies with credibility applied. The credibility of the pooled policies will be based on sound actuarial principles and practices. A certification that the resulting premiums are reasonable in relation to benefits provided shall be submitted to the Department.

(d) All rates for individual conversion policies shall be submitted to the Department in accordance with the requirements of Insurance Code, Article 3.42, and Subchapter A of Chapter 3 of this title. The Department may request documentation related to the premium rates and/or actuarial information of any conversion policy as permitted by Subchapter A of Chapter 3 of this title.

(e) Any converted policy providing the same coverage and benefits with a premium rate of 200% of the premium determined under subsection (a)(1) and (2) of this section shall require actuarial data to substantiate the rate. The premium charged for converted policies must be determined using sound actuarial principles, and the relationship of benefits to premiums paid must be reasonable, subject to the maximum 200% cap.

[(a) The lifetime maximum under a conversion policy providing the same benefits and coverages shall be computed from the initial date of the employee's, member's or dependent's effective date with the group. This shall apply equally in the calculation of lifetime maximum dollar limits or durational limits.

[(b) The lifetime maximum under a conversion policy providing a lesser coverage shall be computed from the effective date of the employee's, member's, or dependent's conversion coverage. This shall apply equally in the calculation of lifetime maximum dollar limits or durational limits.

[(c) The converted policy shall not exclude any condition as a pre-existing condition for a terminated insured unless the condition was excluded as a pre-existing condition under the group policy. Any condition excluded under the group policy may be excluded under the converted policy only until such time as the condition would have been covered under the group policy had the insurance under the group policy remained in force.

[(d) The converted policy may provide that the insurer may refuse to renew the policy or the coverage of any person insured under the policy only for the following reasons:

[(1) if the converted person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan, or by any other plan or program;

[(2) if the converted person is eligible for similar benefits

under any arrangement of coverage for individuals in a group, whether on an insured or an uninsured basis;

[(3) if similar benefits are provided for or available to such person under the requirements of any state or federal law;

[(4) if the converted person fails to provide information as requested by the insurer in advance of any premium due date in order to establish the existence of coverage as outlined in paragraphs (1)-(3) of this subsection;

[(5) fraud or material misrepresentation in applying for any benefits under the converted policy;

[(6) eligibility of the insured person for coverage under Medicare (Title XVIII of the United States Social Security Act as added by the Social Security Amendments of 1965 or as later amended or superseded) or under any other state or federal law (except the Texas Medical Assistance Act of 1967, as amended) providing for benefits similar to those provided by the converted policy; or

[(7) any other reason which has received specific prior approval by the Commissioner.

[(e) Notwithstanding other provisions of this subchapter, a converted policy may provide for reduction of coverage on any person upon his eligibility for coverage under Medicare (Title XVIII of the United States Social Security Act as added by the Social Security Amendments of 1965 or as later amended or superseded) or under any other state or federal law (except the Texas Medical Assistance Act of 1967, as amended) providing for benefits similar to those provided by the converted policy.]

*§3.509. Continuation Premium [Form Filing Requirements].* The premium for continuation shall be the same premium charged active employees, members, or dependents including any amount contributed by the employer/group policyholder, plus 2.0%.

[(a) Each insurer shall be required to submit individual or group policy forms providing conversion coverages in accordance with the requirements of this subchapter. Any accident and health forms filing submitted January 1, 1994, or after shall include the necessary forms, documentation, or certification required by this section. Any insurer subject to the provisions of this subchapter may elect to provide group conversion coverage in lieu of the issuance of an individual converted policy in accordance with the requirements of this subchapter.

[(1) If the insurer elects to provide group conversion coverage, the insurer shall establish a trust for the sole purpose of providing conversion coverages on a group basis. A single trust may be used for the purposes of group conversion coverages providing the same benefits and coverages or lesser coverages. However, a policy shall be issued to the trust for the purpose of providing the same benefits and coverages and a separate policy shall be issued to the trust for the purpose of providing lesser coverages in accordance with the requirements outlined in subsection (b) of this section. A single policy may not be used for the purposes of providing both conversion options.

[(2) Any group conversion policy must contain the following provisions:

[(A) a provision that the trust policy will not be terminated by either the trustee or the insurer until such time as no certificate holders remain covered under the policy; and

[(B) a provision prohibiting any unilateral change in the terms of coverage.

[(b) In order to expedite review time and to insure the same

benefits and coverages, mandatory use of a policy shell format will be required for any accident and health policy forms providing coverages that are subject to the conversion provisions of this subchapter submitted in accordance with Insurance Code, Article 3.42, and Subchapter (A) of this chapter (relating to Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities) on or after January 1, 1994. In addition, all conversion policy forms must be submitted for review in accordance with the requirements of Insurance Code, Article 3.42, and Subchapter (A) of this chapter (relating to Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities). All forms must have a distinguishing form number located in the lower left hand corner of the form. To insure compliance with the requirements of this subchapter, to expedite review time, and to eliminate multiple form filing requirements, mandatory use of a policy shell format will be required as follows.

[(1) The policy shell for policies with the same benefits and coverages will be discussed in this paragraph.

[(A) The requirements for the use of individual conversion policies are:

[(i) an individual policy shell addressing and including all required provisions for any individual policy;

[(ii) an insert provision incorporating by reference the provisions for covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any specified miscellaneous provisions, riders, amendments or endorsements contained in the employee's, member's, or dependent's group certificate on the date of conversion.

[(B) The requirements for the use of group conversion policies are:

[(i) a group conversion policy shell addressing and including all unique required provisions of the conversion trust;

[(ii) an additional insert provision addressing specific conversion policy provisions including termination;

[(iii) an insert provision incorporating by reference the provisions for covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any specified miscellaneous provisions, riders, amendments or endorsements contained in the employee's, member's, or dependent's group certificate on the date of conversion;

[(iv) a copy of the trust agreement.

[(2) The policy shell for policies with lesser coverage options will be discussed in this paragraph.

[(A) The requirements for use of individual conversion policies are:

[(i) an individual policy shell document including and addressing all required provisions for any individual policy; and

[(ii) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits and any miscellaneous provisions for the Preventive and Primary Plan;

[(iii) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits and any miscellaneous provisions for the In-Hospital Plan;

[(iv) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits and any miscellaneous provisions for the Standard Plan;

[(v) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for the Reduced Preventive and Primary Plan;

[(vi) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for any Alternative Plan-Higher Option; and

[(vii) any additional riders, amendments, enrollment forms, or required documentation as outlined §3.2 of this title (relating to General Submission Requirements).

[(B) The requirements for use of group conversion policies are:

[(i) a group conversion policy shell document including and addressing all required provisions which are unique to the trust.

[(ii) a certificate addressing and including all required provisions, covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for the Preventive and Primary Plan (may use a separate insert provision for each section);

[(iii) a certificate addressing and including all required provisions, covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for the In-Hospital Plan;

[(iv) a certificate addressing and including all required provisions, covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for the Standard Plan;

[(v) a certificate addressing and including all required provisions, covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for the Reduced Preventive and Primary Plan;

[(vi) a certificate addressing and including all required provisions, covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for any Alternative Plan-Higher Option;

[(vii) any additional riders, amendments, enrollment forms, or required documentation as outlined in §3.2 of this title (relating to General Submission Requirements);

[(viii) a copy of the trust agreement.

[(c) An insurer may elect to use a department prototype policy for the purposes of compliance with the required lesser coverage options for the Preventive and Primary, In-Hospital, and Standard plan coverages. If an insurer elects to use a department prototype policy, a certification shall be submitted in lieu of the required forms in accordance with the requirements for prototype policies found at §26.14 (relating to Coverage). The additional forms outlined in subsection (b)(2) of this section shall be submitted as otherwise required.

[(d) The insurer shall submit the required notice as outlined in §3. 504 of this title (relating to Notification Requirement of Employer/Group Policyholders and Insurers) for informational purposes. The required notice shall accompany any form filing related to the conversion policies addressed in of subsection (b)(2)(A) of this section.]

***§3.510. Minimum Standards for Benefits for Other Conversion Policies [Language Readability Requirements]. No insurer shall issue any other conversion policy in this state unless it meets the minimum standards as set forth as follows.***

(1) **Hospital or Surgical Expense Coverage.** Subject to the provisions and conditions of these sections, if the group health benefit plan from which conversion is made insures the employee, member, or dependent for basic hospital or surgical expense insurance, any converted policy must provide coverage and benefits on an expense incurred basis under a plan meeting the requirements of the Lesser In-Hospital Conversion Policy Benefit Package (Form Number 369LIHC-BP) (Figure Number 7) found in §3.520 of this title (relating to Appendix). Provisions of the converted policy may not be less favorable than the prototype provisions for covered services and benefits.

(2) **Major Medical Coverage.** If the group health benefit plan from which conversion is made insures the employee, member, or dependent for major medical insurance, any converted policy must provide coverage and benefits on an expense-incurred basis under a plan meeting the requirements of the Basic Conversion Policy Benefit Package (Form Number 369BC-BP) (Figure Number 6) found in §3.520 of this title (relating to Appendix). Provisions of the converted policy may not be less favorable than the prototype provisions for covered services and benefits. [Each insurer shall submit the readability score for the policy and the certificate and any related documents/forms along with the forms at the time of submission for approval. The minimum readability level shall meet the requirements of rules found at Subchapter G of this chapter (relating to Plain Language Requirements for Health Benefit Policies).]

*§3.511. Minimum Standards for Conversion Policy Provisions and Requirements for Conversion Policies [Continuation].*

(a) A conversion policy shall provide for the addition of newborn children and children for whom a court or administrative order has mandated coverage.

(b) A conversion policy may not reduce benefits when benefits are being provided under the Texas Medical Assistance Act of 1967, as amended.

(c) A conversion policy may not exclude any condition as a pre-existing condition of any insured person unless the condition was excluded under the group coverage from which the employee, member, or dependent is converting. Any condition excluded under that policy may be excluded under the conversion policy only until such time as the condition would have been covered under the group policy had the coverage remained in force.

(d) An individual or group conversion policy, subject to this subchapter, may provide that the insurer may refuse to renew the policy or coverage of any person insured under the policy only for the reasons outlined in §3.513 of this title (relating to Minimum Standards for Renewability of Conversion Policies).

(e) Any group conversion policy must contain the following:

(1) a provision that the trust policy will not be terminated by either the trustee or the insurer until such time as no certificate holders remain covered under the policy; and

(2) a provision prohibiting any unilateral change in the terms of coverage.

[(a) Any employee or member or dependent may choose continuation under the group policy in lieu of a conversion policy. To elect continuation, the employee, or member, or dependent must act in accordance with the conditions set forth in paragraphs (1)-(4) of this section.

[(1) Continuation of group coverage must be requested in writing within 31 days following the later of:

[(A) the date the group coverage would otherwise terminate; or

[(B) the date the employee is given notice of the right of continuation by either the employer or the group policyholder.

(2) In no event may the employee or member or dependent elect continuation more than 31 days after the date of such termination.

(3) An employee, member, or dependent electing continuation must pay to the group policyholder or employer, on a monthly basis in advance, the amount of contribution required by the policyholder or employer, plus 2.0% of the group rate for the insurance being continued under the group policy on the due date of each payment.

(4) The employee, member, or dependent's written election along with the premium required to establish premium payment in advance must be received by the group policyholder or employer within 31 days of the date that coverage would otherwise terminate.

(b) Continuation may not terminate until the earliest of:

(1) six months after the date the election is made;

(2) the date on which failure to make timely payments would terminate the coverage;

(3) the date on which the group coverage terminates in its entirety;

(4) the date on which the covered person is or could be covered under Medicare;

(5) the date on which the covered person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program;

(6) the date on which the covered person is eligible for similar benefits whether or not covered therefor under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

(7) the date on which similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law.

[(c) Any insurer providing continuation of group coverage in accordance with Insurance Code, Article 3.51-6, §1(d)(3)(B)(i) in lieu of conversion shall not be relieved of its obligation to provide benefits in the event of policy termination. A conversion privilege shall be available to all insureds including those insureds affected during the six-month continuation period unless the insurer provides for the continuation of the coverage beyond the policy termination date to fulfill the continuation obligations.

[(d) Any continuation offer elected under the options described in this subchapter shall apply upon the completion of any continuation of coverage provided under The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and any amendments thereto.]

*§3.512. Lifetime Maximums and Benefits Calculations [Effective Date].*

(a) The lifetime maximum under a conversion policy providing same or similar coverage and benefits shall be computed from the initial date of the employee's, member's or dependent's effective date under the preceding group coverage. This shall apply equally in the calculation of lifetime maximum



**dollar limits or durational limits.**

(b) **The lifetime maximum under a conversion policy providing lesser coverage and benefits shall be computed from the effective date of the employee's, member's, or dependent's conversion coverage. This shall apply equally in the calculation of lifetime maximum dollar limits or durational limits.**

**(c) Deductible and co-insurance credit.**

(1) **When conversion is being made to a policy of same or similar coverage and benefits, the insurer shall give credit under the conversion policy for any portion of the deductible and any amounts attributed to an insured's out-of-pocket maximums which were met during the policy year in which conversion is made.**

(2) **When conversion is being made to a policy of lesser coverage and benefits, the insurer shall calculate deductibles and co-insurance maximums from the effective date of the conversion coverage.** [The requirements of this subchapter will be effective for any group policy issued, delivered, or renewed on or after January 1, 1994. Conversion of a policy that was delivered, issued for delivery, or renewed before January 1, 1994, is governed by the law including the regulations found at §3.3602 of this title (relating to Minimum Standards for Notice of Conversion or Group Continuation Privilege under Group Accident and Health Policies) in effect immediately before the effective date of this subchapter, and that law is continued in effect for this purpose.]

*§3.513. Minimum Standards for Renewability of Conversion Policies.* A converted policy may provide that the insurer may refuse to renew the policy or the coverage of any person insured under the policy only for the following reasons:

(1) if the converted person is covered for similar benefits by another hospital, surgical, medical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical or other prepayment plan, or by any other plan or program;

(2) if the converted person is eligible for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or an uninsured basis;

(3) if similar benefits are provided for or available to such person under the requirements of any state or federal law;

(4) if the converted person fails to provide information as requested by the insurer in advance of any premium due date in order to establish the existence of coverage as outlined in (a)-(c) of this subsection;

(5) fraud or material misrepresentation in applying for any benefits under the converted policy;

(6) eligibility of the insured person for coverage under Medicare (Title XVIII of the United States Social Security Act as added by the Social Security Amendments of 1965 or as later amended or superseded) or under any other state or federal law (except the Texas Medical Assistance Act of 1967, as amended) providing for benefits similar to those provided by the converted policy; or

(7) any other reason which has received specific prior approval by the Commissioner.

*§3.514. Minimum Standards for Continuation of Coverage.*

(a) For those persons who elect continuation, coverage may not terminate until the earliest of the following dates:

(1) six months after the date the election is made;

(2) the date on which failure to make timely payments would terminate the coverage;

(3) the date on which the group policy terminates in its entirety;

(4) the date on which the covered person is or could be covered under Medicare;

(5) the date on which the covered person is covered for similar benefits by another hospital, medical, surgical, or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program;

(6) the date on which the covered person is eligible for similar benefits whether or not covered therefor under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

(7) the date on which similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law.

(b) Any insurer providing continuation of group coverage in accordance with Insurance Code, Article 3.51-6, §1(d)(3)(B)(i) in lieu of conversion shall not be relieved of its obligation to provide benefits in the event of policy termination. A conversion privilege shall be available to all insureds including those insureds affected during the six-month continuation period unless the insurer provides for the continuation of the coverage beyond the policy termination date to fulfill the continuation obligations.

(c) Any insured person who has elected to continue group coverage under applicable federal or state law shall be included under any group plan which replaces the existing group plan. Coverage under the replacing policy must be continued until the completion of the continuation period.

*§3.515. Prototype Forms and Required Conversion Benefit Packages.*

(a) This section contains requirements for optional prototype policy forms. The policy forms, described in this section and listed in §3.520 of this title (relating to Appendix), are adopted and incorporated by reference to complete an individual prototype policy when combined with the required conversion benefit packages outlined in this section. The policy forms have been filed with the Office of the Secretary of State. The prototype policy forms have been developed to facilitate implementation of the Insurance Code, Article 3.51-6, §1(d)(3) and to streamline the policy approval process. Insurers are encouraged to use all of the prototype policy forms as described in this subsection to expedite the approval process. Each form has a unique form number appearing in the lower left-hand corner and insurers may use one or any number of the prototype forms. Alternate language, except for variables indicated by brackets, must be filed for review and approval under a different form number using 369CONV as part of the form number. Additional filing requirements are outlined in §3.516 of this title (relating to Filing Requirements).

(1) Policy face pages. Policy face pages provide for the entire contract to include the attached application and any attached papers. Each policy face page, whether or not the prototype form is used, shall include the insurer's name and address; provision for the entire contract to include the application and any attached papers; a ten-day free look period; workers' compensation disclaimer notice; description of the policy in bold type as a conversion policy; and the form number in the lower left hand corner. The policy face page for the required conversion benefit packages shall contain the description of the plan in bold type as the Texas Standard Conversion Policy, the Texas Basic Conversion Policy, the Texas In-Hospital Conversion Policy or the Texas Lesser In-Hospital Conversion Policy. The policy face pages for the prototype policies include the following which are found in §3. 520 of this title (relating to Appendix):

(A) Texas Standard Conversion Policy (Form Number 369SC) (Figure Number 8).

(B) Texas Basic Conversion Policy (Form Number 369BC) (Figure Number 9).

(C) Texas In-Hospital Conversion Policy (Form Number 369IHC) (Figure Number 10) .

(D) Texas Lesser In-Hospital Conversion Policy (Form Number 369LHC) (Figure Number 11).

(2) Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures Form (Form Number TOLLFREE) (Figure Number 12) found in §3.520 of this title (relating to Appendix). This prototype form contains the language prescribed in §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) and shall be attached as the second or third page of the policy. The variable provisions are optional only to the extent outlined in §1.601 of this title.

(3) Data Page (Form Number 369CONV-DP) (Figure Number 13) found in §3. 520 of this title (relating to Appendix). Each data page, whether or not the prototype form is used, shall include the insurer's name and address, the name of the policyholder, the policy number, the policy effective date, the amount of premium, and the premium mode. If coverage for a dependent child is added, the insurer shall issue a revised data page including the name and the effective date of coverage for the dependent child. The insurer is permitted to add other information, including but not limited to the policyholder's address and the name of the beneficiary.

(4) Table Of Contents (Form Number 369CONV-TC) (Figure Number 14) found in §3.520 of this title (relating to Appendix). The variable items shall be included or omitted as appropriate for the policy and page numbers shall be numbered accordingly. If the prototype table of contents is not used, the format and order shall be the same as provided in the prototype.

(5) The General Provisions Form (Form Number 369CONV-GP) (Figure Number 15) found in §3.520 of this title (relating to Appendix) may be used with all individual conversion policies. If the prototype General Provisions form is not used, each provision with the same or similar language shall be included in each policy.

(6) The Standard Provisions Form (Form Number 369CONV-SP) (Figure Number 16) found in §3.520 of this title (relating to Appendix) may be used with all individual conversion policies. If the prototype Standard Provisions form is not used, each provision with the same or similar language shall be included in each policy. Variable provisions for the Standard Provisions form include the following:

(A) The Time Limit on Certain Defenses provision is variable only to the extent that the alternate provision may be substituted for use with policies issued for conversion from a small employer plan that is guaranteed issue in accordance with Insurance Code, Article 26.21.

(B) The Payment to Assignee provision under Payment of Claims is variable only to the extent that Chapter 20 companies may substitute this provision for the alternate Assignment provision.

(C) Cancellation, Dividends, Misstatement Of Age, Right to Recovery/Clerical Error, Subrogation and Unpaid Premiums provisions may be included or omitted by the insurer. Right to Recovery/Clerical Error provisions shall be considered one provision for purposes of variability and both provisions shall be either included or omitted.

(b) Required conversion benefit packages and riders are discussed in this subsection. No conversion policy shall be issued or delivered for issue in this state as a Texas Standard Conversion Policy, a Texas Basic Conversion Policy, a Texas In-Hospital Conversion Policy, or a Texas Lesser In-Hospital Conversion Policy unless such policy contains the required benefit and coverage provisions outlined in paragraphs (1)-(5) of this subsection.

(1) The Standard Conversion Policy Benefit Package (Form Number 369SC-BP) (Figure Number 1) found in §3.520 of this title (relating to Appendix) is discussed in this paragraph and shall be in the language and format prescribed. Variable language in the prescribed form is indicated by brackets and is described in the following subparagraphs (A)-(D):

(A) The Schedule of Benefits shall be in the language and format as required in this section and §3.505 of this title (relating to Mandatory Conversion or Continuation Options). The Schedule of Benefits shall reflect any benefits added by riders and any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(B) The Policy Definitions for the Standard Conversion Policy Benefit Package shall be in the language and format prescribed.

(i) The terms and definitions for "Contracting Facility" and "Noncontracting Facility" are variables to be included by Chapter 20 companies only and neither provision shall be used by other than Chapter 20 companies.

(ii) The term and definition of "Hospital" is variable only to allow for additional criteria for purposes of clarification or to accommodate insurers with unique operations and special statutory rights, such as Chapter 20 companies.

(C) The Benefits Provided for the Standard Conversion Policy Benefit Package shall be in the language and format prescribed. The services provided by first assistant at surgery may be included as a covered service if elected by the insurer.

(D) The Exclusions and Limitations for the Standard Conversion Policy Benefit Package shall be in the language and format prescribed. The variable exclusions may be included by Chapter 20 companies.

(2) The Basic Conversion Policy Benefit Package (Form Number 369BC-BP) (Figure Number 6) found in §3.520 of this title (relating to Appendix) is discussed in this paragraph and shall be included in the language and format prescribed. Variable language in the prescribed form is indicated by brackets and is described in the following subparagraphs (A)-(D):

(A) The Schedule of Benefits shall be in the language and format prescribed. The Schedule of Benefits shall reflect any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(B) The Policy Definitions for the Basic Conversion Policy Benefit Package shall be in the language and format prescribed.

(i) The terms and definitions for "Contracting Facility" and "Noncontracting Facility" are variables to be included by Chapter 20 companies only and neither provision shall be used by other than Chapter 20 companies.

(ii) The term and definition of "Hospital" is variable only to allow for additional criteria for purposes of clarification or to accommodate insurers with unique operations and special statutory rights, such as Chapter 20 companies.

(C) The Benefits Provided for the Basic Conversion Policy Benefit Package shall be in the language and format prescribed. The services provided by first assistant at surgery may be included as a covered service if elected by insurer.

(D) The Exclusions and Limitations for the Basic Conversion Policy Benefit Package shall be in the language and format prescribed. The variable exclusions may be included by Chapter 20 companies.

(3) The In-Hospital Conversion Policy Benefit Package (Form Number 369IHC-BP) (Figure Number 5) is discussed in this paragraph and shall be included in the language and format prescribed. Variable language in the prescribed form is indicated by brackets and is described in the following subparagraphs (A)-(D):

(A) The Schedule of Benefits shall be in the language and format prescribed. The Schedule of Benefits shall reflect any benefits added by riders as required by this section and §3.505 of this title (relating to Mandatory Conversion or Continuation Options) and found in §3.520 of this title (relating to Appendix) and any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(B) The Policy Definitions for the In-Hospital Conversion Policy Benefit Package shall be in the language and format prescribed.

(i) The terms and definitions for "Contracting Facility" and "Noncontracting Facility" are variables to be included by Chapter 20 companies only and neither provision shall be used by other than Chapter 20 companies.

(ii) The term and definition of "Hospital" is variable only to allow for additional criteria for purposes of clarification or to accommodate insurers with unique operations and special statutory rights, such as Chapter 20 companies.

(C) The Benefits Provided for the In-Hospital Conversion Policy Benefit Package shall be in the language and format prescribed. The services provided by first assistant at surgery may be included as a covered service if elected by the insurer.

(D) The Exclusions and Limitations for the In-Hospital Conversion Policy Benefit Package shall be in the language and format prescribed. The variable exclusions may be included by Chapter 20 companies.

(4) The Lesser In-Hospital Conversion Policy Benefit Package (Form Number 369LIHC-BP) (Figure Number 7), and found in §3.520 of this title (relating to Appendix), is discussed in this paragraph and shall be included in the language and format prescribed. Variable language in the prescribed form is indicated by brackets and is described in the following subparagraphs (A)-(D):

(A) The Schedule of Benefits shall be in the language and format prescribed. The Schedule of Benefits shall reflect any penalties for failing to comply with any precertification or cost containment provisions. Any such penalties shall not reduce benefits more than 50% in the aggregate.

(B) The Policy Definitions for the Lesser In-Hospital Conversion Policy Benefit Package shall be in the language and format prescribed.

(i) The terms and definitions for "Contracting Facility" and "Noncontracting Facility" are variables to be included by Chapter 20 companies only and neither provision shall be used by other than Chapter 20 companies.

(ii) The term and definition of "Hospital" is variable only to allow for additional criteria for purposes of clarification or to accommodate insurers with unique operations and special statutory rights, such as Chapter 20 companies.

(C) The Benefits Provided for the Lesser In-Hospital Conversion Policy Benefit Package shall be in the language and format prescribed. The services provided by first assistant at surgery may be included as a covered service if elected by the insurer.

(D) The Exclusions and Limitations for the Lesser In-Hospital Conversion Policy Benefit Package shall be in the language and format prescribed. The variable exclusions may be included by Chapter 20 companies.

(5) Riders are discussed in this paragraph. The insurer shall include with the converted policy the riders described in subparagraphs (A)-(C) as required by §3.505 of this title (relating to Mandatory Conversion or Continuation Options). Any benefits added by riders shall be reflected on the Schedule of Benefits.

(A) The Alcohol and Drug Abuse Benefit Rider (Form Number 369CONV-ADB) (Figure Number 2) found in §3.520 of this title (relating to Appendix) may be included with the Texas Standard Conversion Policy.

(B) The Mental Health Benefit Rider (Form Number 369CONV-MHB) (Figure Number 3) found in §3.520 of this title (relating to Appendix) may be included with the Texas Standard Conversion Policy.

(C) The Prescription Drug Benefit Rider (Form Number 369CONV-RX) (Figure Number 4) found in §3.520 of this title (relating to Appendix) may be included with the Texas Standard Conversion Policy and the Texas In-Hospital Conversion Policy. Benefits shall be provided at a Percentage Payable of 50%. In the alternative, the insurer may elect to provide the prescription drug benefit through a prescription drug card program with a co-payment of \$8 per prescription or refill for a generic drug, or name brand drug if less than the generic drug, and a co-payment of \$12 per prescription or refill for a name brand drug. Exclusions of a prescription drug card program shall not be more restrictive than the exclusions contained in Form Number 369CONV-RX (Figure Number 4) found in §3.520 of this title (relating to Appendix).

(6) Individual family conversion policies issued to cover an employee/member and eligible dependents are discussed in this paragraph. Although conversion policies covering an employee/member and eligible dependents were not developed, insurers must develop their own conversion policies using the rules for the individual conversion policies amended as necessary to comply with

all statutes and regulations pertaining to dependent coverage. Prescribed components include the required conversion packages as set out in §3.515(b)(1)-(5) of this section. All developed forms must be filed with the Department in accordance with §3.516 of this title (relating to Filing Requirements).

(7) Group conversion policies are discussed in this paragraph. Although group conversion policies were not developed, insurers must develop their own group conversion policies using the rules for the individual conversion policies amended as necessary to comply with the statutes and regulations pertaining to group accident and sickness insurance. Prescribed components include the required conversion packages as set out in §3.515(b)(1)-(5) of this section. All developed forms must be filed with the Department in accordance with §3.516 of this title (relating to Filing Requirements).

#### *§3.516. Filing Requirements.*

(a) An insurer may provide conversion coverage through use of the individual conversion prototype policy forms found in §3.520 of this title (relating to Appendix); or through individual forms designed and developed by the insurer; or through group policy/certificate forms designed and developed by the insurer pursuant to Insurance Code, Article 3.51-6, §1(a)(4), or through a combination of these methods.

(b) All conversion policy forms shall be in policy shell format.

(c) The Prototype Conversion Certification Form (Form Number 369CONV-CERT) (Figure Number 17) found in §3.520 of this title (relating to Appendix) shall accompany each filing being made under subsection (a) of this section. The Prototype Conversion Certification Form shall be signed by an officer of the company. The company shall complete and certify through use of the Prototype Conversion Certification Form:

- (1) If the insurer will be using only prototype forms;
- (2) If any cost containment provisions will be utilized;

(A) An insurer shall list any previously approved cost containment forms that will be used and dates of approval.

(B) If the cost containment forms have not been previously approved, the insurer shall include/attach to the certification two copies of the cost containment forms.

(3) If the insurer is under contract to provide conversion for other insurers and if so, list the names of the insurers;

(4) The option the insurer will provide in the event the group policy is terminated during a continuation period;

(5) If the insurer has elected to offer same coverage and benefits for plans issued after June 1, 1996 as allowed by §3.505(a)(2) of this title (relating to Mandatory Conversion or Continuation Options);

- (6) If the insurer will utilize group conversion trusts;

(A) An insurer shall list any previously approved group conversion trusts and dates of approval.

(B) If the group conversion trust has not been previously approved, the insurer shall include/attach to the certification, a copy of the group conversion trust agreement.

(7) If the insurer will be offering other conversion options as allowed by §3.505(a)(5) of this title;

(A) An insurer shall list any previously approved conversion forms that will be used, dates of approval and that the coverage and benefits of the previously approved forms exceed the minimum standards of §3.510 of this title (relating to Minimum Standards for Benefits for Other Conversion Policies).

(B) If the other conversion options have not been previously approved, the insurer shall include/attach to the certification two copies of the other conversion forms.

(8) Which of the prototype forms will be used and if applicable, alternative forms and flesch scores.

(A) An insurer, utilizing the conversion prototype forms to meet the requirements of this subchapter, shall not submit the prototype forms to the Department for review and approval.

(B) If the alternate forms have not been previously approved, the insurer shall include/attach to the certification two copies of the alternate forms.

(C) An insurer shall list any previously approved alternate forms that will be used and dates of approval.

(d) Unless same coverage is offered by the insurer, the Prototype Benefit Packages required by §3.505(a)(2)(B) and (C) and §3.515(b)(1) and (3) of this title (relating to Prototype Forms and Required Conversion Benefit Packages.) shall be inserted into individual or group conversion policy shells as may be appropriate to produce conversion policies in compliance with this subchapter.

(e) An insurer shall submit to the Department any forms designed and developed by the insurer not previously approved and referenced in subsection (c) of this section, pursuant to Insurance Code, Article 3.42 and Subchapter A of this Chapter (relating to Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities).

*§3.517. Language Readability Requirements.* An insurer not using prototype forms shall submit the readability score for the policy and the certificate and any related documents/forms along with the forms at the time of submission for approval. The minimum readability level shall meet the requirements of rules found in Subchapter G of this Chapter (relating to Plain Language Requirements for Health Benefit Policies).

*§3.518. Mandatory Group Policy Provisions.* In conjunction with this subchapter, every group accident and health policy/certificate required to provide conversion or continuation shall contain policy provisions addressing the conversion and continuation options available to an insured.

(1) Small employer plans shall include language that is the same or similar to the language found in Figure Number 28 in the Appendix to Chapter 26 of this title (relating to the Small Employer Health Insurance Regulation).

(2) All other group accident and health policies/certificates shall contain language that is the same or similar to the language contained in the Group Policy Mandatory Conversion Provision (Figure Number 369CCPRO) (Figure Number 18) found in §3.520 of this title (relating to Appendix).

*§3.519. Effective Date.* The requirements of this subchapter will be effective for any group policy issued or delivered on or after June 1, 1996. Conversion of a group policy that was delivered, issued for delivery, or renewed prior to June 1, 1996, is governed by the laws

and regulations in effect immediately before the effective date of this subchapter.

*§3.520. Appendix.* The forms adopted and incorporated by reference in §3.503 of this title (relating to Forms Adopted and Incorporated by Reference) and §3.515 of this title (relating to Prototype Forms and Required Conversion Benefit Packages) are included in this Appendix. The following list refers to the form number, figure number, and its description.  
Figure No. 1: 28 TAC §3.520.

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 27, 1996.

TRD-9604298      Alicia M. Fechtel  
                            General Counsel and Chief Clerk  
                            Texas Department of Insurance

Earliest possible date of adoption: May 6, 1996

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

◆           ◆           ◆  
**TITLE 30. ENVIRONMENTAL QUALITY**

**Part I. Texas Natural Resource  
Conservation Commission**

**Chapter 292. River Authorities**

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§292.1, 292.2, 292.11, and 292.13 and repeal to §292.3, concerning river authorities and the commission's supervision over their actions.

These changes are in response to the passage of Senate Bill 626, Acts of the 74th Legislature, 1995, which repealed and reorganized several administrative provisions in Texas Water Code, Chapters 50-66, as well as other legislative changes.

Proposed amendments to §§292.1-292.2 would change all references from the Texas Water Commission to the Texas Natural Resource Conservation Commission or the commission, as appropriate.

Section 292.3, relating to Texas Natural Resource Conservation Commission Report to the Legislature is repealed.

Section 292.11, relating to Administrative Policies to be Adopted by the Board, is proposed to be amended to change the citations from the repealed sections in Chapter 50, of the Texas Water Code, to the corresponding new sections in Chapter 49.

Section 292.13(1), (3) and (4) are proposed to be amended to update the citations to the Public Funds Investment Act, the Public Funds Collateral Act, the statutory provisions on nepotism and conflict of interest, and the Professional Services Procurement Act. Paragraph 292.13(1)(c) is also amended to make it clear that it applies only to River Authorities as specified in the statute. Section 292.13(6)(A) proposes to change the reference from the Texas Water Commission to the commission.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that, for the first five-year period these sections as proposed are in effect, there will be no significant fiscal implications anticipated for state or local governments as a result of enforcement and administration of these sections.

Mr. Minick also has determined that, for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement and compliance with these sections will be the clarification of existing state regulations for river authorities, increased consistency between state regulations and statutory authority and more consistent management of the financial operations of river authorities. There are no economic costs anticipated for any person required to comply with these sections as proposed.

Written comments may be mailed to Lutrecia B. Oshoko, TNRCC Office of Policy and Regulatory Development, MC205, P.O. Box 13087,

Austin, Texas 78711-3087; faxed to (512) 239-5687; or e-mailed to LOSHOKO@smpt.gate.tnrcc.state.tx.us. All comments should reference Rule Log Number 95162-293-WT. Comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information, please contact Sam Jones, Water Utilities Division, at (512) 239-6167.

The Commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The main purpose of the rule is to implement Senate Bill 626, enacted by the 74th legislature, 1995. The rules will substantially advance this specific purpose by changing the cites from the repealed Chapter 50, Water Code to the new Chapter 49, Water Code and amending the rules where necessary to reflect changes in the statutes as more fully described herein. Promulgation and enforcement of these rules will not affect private real property.

**Subchapter A. General Provisions**

• **30 TAC §292.1, §292.2**

The amendments are proposed under Texas Water Code, §§5.103, 5.105, and 5.235, which provides the TNRCC with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approval all general policy of the commission, and to collect statutory fees from person filing various applications with the commission.

There are no other rules, codes or statutes that will be affected by this proposal.

*§292.1. Objective and Scope of Rules.*

(a) The [Texas Water] commission has the continuing right of supervision of districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution. This chapter shall govern the administrative policies of the following districts:

(1)-(20) (No change.)

(b) (No change.)

*§292.2. Meaning of Certain Words.* Unless the context requires otherwise, the following terms and phrases shall mean the following:

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

(3) Commission means the Texas **Natural Resource Conservation** [Water] Commission.

(4) Executive Director means the executive director of the Texas **Natural Resource Conservation** [Water] Commission.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604093      Kevin McCalla  
                            Director, Legal Division  
                            Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

◆           ◆           ◆  
• **30 TAC §292.3**

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws

of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§292.3. Texas Water Commission Report to the Legislature.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604092 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Subchapter B. Administrative Policies

### • 30 TAC §292.11, §292.13

The amendments are proposed under Texas Water Code, §§5.103, 5.105, and 12.081, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to issue rules necessary to supervise districts and authorities.

*§292.11. Administrative Policies to be Adopted by the Board.*

(a) All districts must adopt certain administrative policies in compliance with Water Code, §49.199 [50.381] and §49.200 [50.3811]. The administrative policies shall incorporate the legal provisions as set forth in §292.13 of this title (relating to Minimum Provisions). The provisions set forth in §292.13 of this title are considered to be the minimum standards by which the conduct and activities of the boards are governed.

(b) (No change.)

*§292.13. Minimum Provisions.* The following provisions shall be incorporated into the administrative policies adopted by the authorities subject to these rules.

(1) Code of Ethics. The administrative policies shall mandate compliance with the following standards:

(A) (No change.)

(B) Texas **Government Code, Chapter 573**, [Civil Statutes, Article 5996a] relating to nepotism.

(C) **for River Authorities, Texas Government Code, Chapter 572** [Civil Statutes, Article 6252-9b], relating to standards of conduct, **personal** [and] financial disclosure, **and conflict of interest**.

(D) (No change.)

(2) (No change.)

(3) Investments. The administrative policies shall provide for compliance with the following statutes:

(A) **Subchapter A, Chapter 2256, Government Code** [Texas Civil Statutes, Article 842a-2] (the Public Funds Investment Act [of 1987]);

(B) **Chapter 2257, Government Code** [Texas Civil Statutes, Article 2529(d)] (the Public Funds Collateral Act); and

(C) (No change.)

(4) Professional Services Policy. The administrative policies shall provide for compliance with the following standards:

(A) Texas **Government Code, Chapter 2254, Subchapter A** [Civil Statutes, Article 664-4] (the Professional Services Procurement Act) which prohibits the selection of professional services based on competitive bids.

(B) (No change.)

(5) (No change.)

(6) Management Policies. The administrative policies shall provide for the following:

(A) an independent management audit to be conducted every five years and submitted to the [Texas Water] commission. As an alternative, an internal audit office may be established which reports to the board of directors.

(B) (No change.)

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604139 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Chapter 293. Water Districts

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§293.11-293.18, 293.22-293.24, 293.41, 293.60, 293.61, 293. 149-293.152, 293.177, 293.301-293.311, 293.331, 293.341, and 293.343; amendments to §§293.1, 293.3, 293.4, 293.6, 293.21, 293.32-293.34, 293. 42-293.44, 293.46-293.48, 293.50, 293.55-293.57, 293.59, 293.62, 293.63, 293. 68-293.70, 293.83, 293.88, 293.91-293.97, 293.101, 293.111, 293.121, 293.123, 293.124, 293.131, 293.132, 293.134, 293.141-293.143, 293.145, 293.146, 293.148, 293.171-293.173, 293.180, 293.201, 293.202, and 293.361-293.365; and add new §§293.11-293.15, 293.22-293.25, 293.35, 293.41, 293.60, 293.61, 293.80, 293. 102, 293.103, 293.149, and 293.150, relating to water districts subject to commission supervision.

The purpose of the proposed rules is to incorporate new references and new requirements relating to the administration of water districts and the commission's supervision over their actions as provided by Senate Bill (SB) 626, Acts of the 74th Legislature, 1995, which repealed and reorganized several administrative provisions in the Texas Water Code, Chapters 50-66 and added Chapters 49 and 59. These amendments would also incorporate new procedural requirements for designating groundwater management areas pursuant to House Bill (HB) 2294, Acts of the 74th Legislature, 1995, and HB 2209, Acts of the 73rd Legislature, 1993, which codifies the creation and duties of the Harris-Galveston Coastal Subsidence District into a new Title 5 of the Texas Water Code. Additionally, these revisions would reflect updated citations to other statutory requirements and cross-references to other chapters of this title as well as clarifying certain sections.

Section 293.1, relating to Objective and Scope of Rules; Meaning of Certain Words, proposes to amend references from the Texas Water Commission to the Texas Natural Resource Conservation Commis-

sion; to replace the listing of types of districts subject to commission supervision with a general description of the commission's authority; and to eliminate the language concerning inspection and approval of facilities, which is covered by §§290.38-290.47 of this title, relating to Rules and Regulations for Public Water Systems, and Chapter 317 of this title, relating to Design Criteria for Sewerage Systems.

Section 293.3, relating to Continuing Right of Supervision of Districts, is proposed to be amended to correspond to the language in the Texas Water Code, §12.081.

Section 293.4, relating to Public Records, proposes to amend a citation from §50.054, the Texas Water Code to new §49.194; to delete a reference to repealed §50.105, Texas Water Code; and to update the citation to the Open Records Act, now the Public Information Act.

Section 293.6, relating to Applications Processing Requirements, proposes to include a reference to Chapter 263 of this title, relating to Final Approval by Executive Director, Evaluation of Requests for Contested Case Hearings.

New §293.11, relating to Information Required to Accompany Applications for Creation of Districts, proposes to clarify and detail the submission requirements for requests to the commission to create different types of districts. Each type district has its own specific subsection with requirements specific to that type district. The proposed new section also reflects the Texas Water Code, new Chapters 35, 36, 49, and 59; and requires that district creation applications include a reproducible boundary map or a map in digital format. The proposed revisions would also eliminate provisions concerning the form of notice, due to the repeal of §293.18, relating to Form of Notice of a Public Hearing on the Creation of a Water District. The creation petition provisions for regional districts are proposed to reflect the requirements of new Chapter 59, the Texas Water Code. Additionally, a proposed new §293.11(h)(11) would require a water supply corporation to provide evidence that notice to transfer the assets and certificate of convenience and necessity to the proposed district was provided to the customers and the executive director in accordance with §291.110 and §291.111 of this title, relating to Report of Sale, Merger or Consolidation and Transfer of Certificates of Convenience and Necessity, respectively.

New §293.12, relating to Creation Hearing Notice Actions and Requirements, proposes that the commission's Chief Clerk issue an appropriate form for notice. Section 293.12 would also amend the references from Chapter 50 to new Chapter 49, the Texas Water Code. Additionally, §293.12 proposes to clarify the notice provisions relating to each type district.

New §293.13, relating to Commission Actions Following Creation Hearing, and §293.14, concerning District Reporting Actions Following Creation, are renumbered from §293.15 and §293.16, respectively and are edited to reflect references to the new Chapters 36, 49, and 59, Water Code. Section 293.15, relating to Addition of Sewer and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts, would add references to the new Chapters 36, 49 and 59, the Texas Water Code; would change the term "sanitary sewer" to "wastewater"; and would change references from the Texas Water Commission to the Texas Natural Resource Conservation Commission. Proposed §293.15(b)(5) would also eliminate the requirement that an application for district conversion include a form of notice and §293.15(c)(1) would require that notice be issued in a form issued by the Chief Clerk.

Section 293.21, relating to Designation of Underground Water Management Area, proposes to amend the language from "underground water management areas" to "groundwater management areas" and to reference the new Chapter 35, the Texas Water Code.

New proposed §293.22, relating to Petition for Adoption of Rules Designating a Groundwater Management Area, would clarify that groundwater management areas are now designated through the rulemaking process, as prescribed by the Texas Water Code, §35.005, and not through the former evidentiary hearings process.

New proposed §293.23, relating to Commission Consideration of Petition for Adoption of Rules Designating a Groundwater Management Area, would reflect the requirements in the Administrative Procedure Act (Subchapter B, Chapter 2001, Government Code) which prescribes a time frame for the commission's response to a petition to initiate a rulemaking proceeding.

New proposed §293.24, relating to Notice of Commission Consideration of Final Adoption of Rules Designating a Groundwater Management Area, would describe the notice requirements for commission consideration of the adoption of final rules designating a groundwater management area as prescribed by the Texas Water Code, §35.006.

New proposed §293.25, relating to Alteration of Groundwater Management Area, would incorporate language from the former §293.23 for improved clarity and organization, and would update statutory citations to reflect the changes made by HB 2294 (1995).

Section 293.32(a)(2), relating to Qualifications of Directors, proposes to amend the reference from Chapter 50 to new Chapter 59, the Texas Water Code, and to change the age requirement from 21 to 18 years of age as the Texas Water Code no longer requires minimum age of 21 years for board members. Section 293.32(b) proposes to amend references from Chapters 50, 51 and 54 to new Chapter 49, the Texas Water Code.

Section 293.34, relating to Form of Affidavit for Appointment as Director, are proposed to be amended to clarify the language for director disqualifications due to employer. Additionally, §293.33(4) would require that notice be given to directors of record that a petition for appointment of directors has been filed with the commission.

New proposed §293.35, relating to Reinstatement of a Board Member, would establish the procedure to be followed for appeal to the commission of a board member's removal. Section 293.35 would also detail the document submittal requirements and would set the application filing fee at \$100 as allowed in §5.235 of the Texas Water Code.

New proposed §293.41, relating to Approval of Projects and Issuance of Bonds, would include different types of projects and not just engineering projects; would reflect which districts are required to seek commission approval of the issuance of tax and/or revenue bonds, or revenue notes as defined in §293.80(d); and would provide an exemption from this requirement in conformance with new §49.181, Texas Water Code. Proposed §293.41 would also reflect that the commission no longer has review and approval authority over bonds issued by districts which are issued through and approved by the Rural Economic and Community Development Service (formerly Farmers Home Administration) of the United States Department of Agriculture or the Texas Water Development Board.

Section 293.42, relating to Filing of Documents, proposes to delete as unnecessary subsection (b), which requires that a duplicate copy of the bond application report be submitted to the appropriate commission region office.

Section 293.43, relating to Application Requirements, proposes to amend references from Chapter 50, the Texas Water Code, to new Chapter 49; to update provisions concerning bond issuance in other chapters of the Texas Water Code that have been repealed; and to delete the word "engineering" to include projects other than just engineering projects.

Section 293.44, relating to Special Considerations, proposes to amend references from Chapter 50, the Texas Water Code, to new Chapter 49, and to change the term "sewer" to "wastewater". Section 293.44(a)(3) proposes to eliminate the term "reimbursable" as it was misplaced because the intent of the rule was to address those expenses which were not reimbursable. Additionally, §293.44(a)(16) proposes to amend the criteria for which organizational, creation, operation and maintenance costs may be funded with bond proceeds pursuant to the new §49.155, the Texas Water Code.

Section 293.46(2), relating to Construction Prior to Commission Approval, proposes to update a reference to §293.62, relating to Construction Related Documents to be Filed With the Commission. Section 293.46(5) proposes to add the date that the subsection was first effective, that is, September 5, 1986.

Proposed amendments to §293.47, relating to Thirty Percent of District Construction Costs to be Paid by Developer, would reflect the use of the language "wastewater" in lieu of "sewer" or "sanitary sewer," and would change the reference from §50.026(d) to §49.052(d), the Texas Water Code. Section 293.47(d)(8) would also clarify which drainage related costs are exempt from the 30% developer contribution. Section 293.47(d)(11) is proposed to be added to include lease payments as eligible for 100% reimbursement if not otherwise funded. Additionally, §293.47(g) would reflect a renewal deadline of 45 days instead of 30

days before the expiration date for letters of credit provided by developers on behalf of districts before the letter of credit is called by the district.

A proposed amendment to §293.48, relating to Street and Road Construction by Developer, would reference utility construction, including water, wastewater, and drainage facilities, in the specific language for financial guarantees and related agreements.

Section 293.50(d)(5), relating to Developer Interest Reimbursement, proposes to clarify which drainage facilities may qualify for 100% reimbursement. Proposed §293.50(e) would provide that developer interest may be funded on advances for operation and maintenance costs if the requirements in that section are met.

Proposed §293.55, relating to Tax Anticipation Notes, would be amended to reference the new §49.154, the Texas Water Code.

Proposed §293.56, relating to Requirements for Letters of Credit, would be amended to provide that the executive director's written approval instead of commission approval is required prior to the commitment or expenditure of funds received from calling a financial guarantee. Section 293.56(f) would amend the letter of credit form to include utilities as well as streets. Section 293.56(f), Form of Letter of Credit, would be amended to refer to a street and utility agreement instead of a street and road agreement.

Section 293.57, relating to Form of Street and Utility Agreement, proposes to refer to a street and utility agreement instead of a street and road agreement; to include utilities as well as streets; to change a reference from "sewer" to "wastewater"; and to provide that the executive director's written approval instead of commission approval is required on this form.

Proposed amendments to §293.59, relating to Economic Feasibility of Project, would change the language in the definition of "combined no-growth debt service tax rate" and "combined projected debt service tax rate" to exclude the words "debt service" in order to reduce confusion about the meaning. Additional proposed changes would add contract tax, if any; change references from "sewer" to "wastewater"; clarify which overlapping tax rates are to be included; and change the references from §50.026(d) to §49.052(d), the Texas Water Code. Section 293.59(k)(6) regarding the requirement that projects funded with a particular bond issue be at least 95% complete would also be amended to include 95% completion requirement for facilities necessary to serve the projected build-out used to support the feasibility of the subject bond issue. Additionally, §293.59(1)(5)(B) is proposed to be amended to clarify that a waiver may be granted under this subsection conditioned on a district obtaining a bond rating prior to the sale of bonds.

New proposed §293.60, relating to Conditional Approval Based on Performance of a Developer in Other District Projects, and new proposed §293.61, relating to Bond Related Documents to be Filed with the Commission, would be moved to the undesignated heading entitled "Issuance of Bonds." The new proposed sections would also include references to new §49.052(d), the Texas Water Code, and would provide for different types of projects other than just engineering projects.

The title for the undesignated heading including §§293.62-293.70 is proposed to be amended from "District Actions if the Commission Approves the Engineering Project and Issuance of Bonds" to "District Actions Related to Construction Projects and Purchase of Facilities."

Section 293.62, relating to Transmittal Reports, would delete the word "engineering" to include projects other than engineering projects. Proposed amendments to §293.62 would also amend the references from "sanitary sewer" to "wastewater."

Section 293.63(4), relating to Contract Documents for Water District Projects, proposes to require bidders to submit cashier's checks or bid bonds on projects estimated to cost \$25,000 or more. Section 293.63(6) also proposes to reflect that a district may establish qualifications for surety companies to bond projects for the district.

Section 293.68, relating to Document Identification, is proposed to be amended to clarify the language on document identification when sending documents to the commission.

Section 293.69, relating to Purchase of Facilities, is proposed to be amended to establish inspection requirements when a district purchases facilities from a water supply corporation and investor owned utility as well as from a developer.

Section 293.70, relating to Audit of Payments to Developer, proposes to include maintenance tax in the listing of revenues which are used to reimburse a developer and require an audit. Additionally, references to the Texas Water Commission would be replaced with the Texas Natural Resource Conservation Commission.

New proposed §293.80, relating to Revenue Notes, would establish the application requirements and approval criteria for seeking commission approval of revenue notes of a term longer than three years (other than revenue bonds) pursuant to the new Texas Water Code, §49.153. Proposed §293.80 would be included in the undesignated subchapter §293.81-293.88, entitled "Other Actions Requiring Commission Consideration for Approval," with the new reference being §§293.80-293.88.

Proposed amendments to §293.83, relating to District Use of Surplus Funds, would outline the application requirements for commission approval of the use of maintenance tax revenue to reimburse a developer and related reporting requirements. Additionally, this section would amend the reference from "sanitary sewer" to "wastewater."

Proposed amendments to §293.88, relating to Petition for Authorization to Proceed in Federal Bankruptcy, would amend the references from §50.060, the Texas Water Code, to new §49.456. Additionally, §293.88(c), which provided that the commission could compel the attendance of district board members and other relevant parties at any hearing, would be eliminated as these requirements are not required by statute. Section 293.88(e) would be added to reflect the statutory authority granted to the commission to recover its costs in processing applications to proceed in bankruptcy.

Proposed amendments to §293.91, relating to Reporting by Districts, would amend references from the Texas Water Commission to the Texas Natural Resource Conservation Commission, and would delete the language requiring immediate notification of a change in directors due to resignation or death. Additionally, this section would update references from Chapter 50, the Texas Water Code, to the applicable provisions in new Chapter 49.

Proposed amendments to §293.92, relating to Additional Reports and Information Required of Certain Districts, would amend a reference from "sewer" to "wastewater;" would change references from §50.301, the Texas Water Code, to §49.452; and would clarify the types of information required. Additionally, this proposed section would exclude from the reporting requirements information concerning refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity and would include the aggregate initial principal amount of all bonds payable in whole or in part by taxes which remain outstanding.

The proposed amendment to §293.93, relating to Special Reporting Requirements for Districts Subject to Consent Agreements Made Pursuant to the Texas Water Code, §54.016(h), would amend the references in §50.302(c)-(j), the Texas Water Code to §49.455(c)-(j).

Proposed amendments to §293.94, relating to Annual Financial Reporting Requirements, would change references from §§50.371-50.381, the Texas Water Code, to new §§49.191-49.198; would remove the language requiring commission approval to adopt and revise the accounting and auditing manuals; would remove the language regarding an audit by the state auditor; and would clarify that a district's financial statements must be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. Additionally, this section proposes to amend the exemption from preparing an audit for those districts not collecting any taxes and would increase the caps on gross receipts from \$20,000 to \$100,000 and cash and temporary investments from \$50,000 to \$100,000. This section would also be amended to allow the completion of the filing affidavits by a duly authorized district representative; to allow districts not filing audit reports to be subject to periodic audits by the executive director; to remove the requirement to file a copy of the district's audit report, financial report, or financial dormancy affidavit in the local city or county offices; to provide for optional review of each audit report by the executive director; to change the civil penalty for noncompliance with filing provisions to \$100 per day in accordance with Chapter 49, the Texas Water Code; and to allow the state the option to sue to recover the penalty.

Proposed amendments to §293.95, relating to Access to and Maintenance of District Records, and §293.96, relating to Miscellaneous



Reports to be Filed with the Executive Director, would change references from "sewer" to "wastewater."

Section 293.97, relating to Adoption of Fiscal Year and Operating Budget, proposes to require a district to adopt an operating budget before the start of a fiscal year.

The title for undesignated heading §293.101, District Name Signs, is proposed to be modified to "District Name Changes and Posting Signs." Proposed amendments to §293.101, relating to Posting Notice in the District, would change references from the Texas Water Commission to the Texas Natural Resource Conservation Commission and would reflect the statutory description of which districts are required to post district name signs in accordance with §49.451, the Texas Water Code.

New proposed §293.102, relating to District Name Change, would establish application requirements and filing fee for districts to obtain commission approval of a name change and to specify district actions following commission approval of a name change.

New proposed §293.103, relating to Form of Notice for Name Change, would provide a suggested form of notice for district's name change.

Proposed amendments to §293.111, relating to Sanitary Sewer Service Lines and Connection, would change references from "sewer" or "sanitary sewer" to "utility" and would reference the requirement for a water customer service inspection certification program as found in §§290.38-290.47 of this title, relating to Rules and Regulations for Public Water Systems.

Proposed amendments to §293.121, relating to Approval of Fire Department Projects, §293.123, relating to Application Requirements for Fire Department Plan Approval, and §293.124, relating to Application Requirements for Fire Department Financing, would change references from the Texas Water Commission to the Texas Natural Resource Conservation Commission, and would change references from Chapter 50 to the new applicable provisions in Chapter 49, the Texas Water Code.

Proposed amendments to §293.131, relating to Authorization for Dissolution of Water Districts by the Texas Water Commission, would change references from the Texas Water Commission to the Texas Natural Resource Conservation Commission, and would change references from §§50.251-50.258, the Texas Water Code, to new §§49.321-49.327 and §49.197. Additionally, §293.131(g) is proposed to be added to specify under what conditions the executive director may initiate dissolution proceedings.

Section 293.132, relating to Notice of Hearing, proposes to change references from §50.252, the Texas Water Code, to new §49.322.

Section 293.134, relating to Order of Dissolution, proposes to change the reference from Texas Civil Statutes, Article 3270a, 1925, to Property Code, Chapter 74, to accurately reflect the commission's statutory authority regarding order of dissolution.

Section 293.141, relating to Standby Fees, is proposed to be amended in accordance with new §49.231, the Texas Water Code, to expand the applicability of standby fees to include virtually all water districts, as defined by the Texas Water Code, §49.001. An additional amendment to this section would redefine standby fees to include drainage facilities and services; standby fees for drainage fees were not allowed under the predecessor to §49.231, the Texas Water Code. Section 293.141 would also reflect that the commission may authorize a district to assess a standby fee prior to January 1 of the calendar year in which such fee is approved.

Proposed amendments to §293.142, relating to Application Requirements for Imposition of Standby Fees to be Used to Supplement the Debt Service Account, and §293.143, relating to Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund, would include drainage facilities in the application process and in the calculation of standby fees, and would change references from "sewer" to "wastewater." Additionally, the definition of combined no-growth debt service tax rate and combined projected debt service tax rate would be amended to exclude the words "debt service."

Proposed amendments to §293.145, relating to Public Hearing and Notice Requirements, would provide that the commission may remand an item for an evidentiary hearing and would establish that the district shall publish a notice of the hearing in a form provided by the chief clerk.

Section 293.146(b), relating to District Actions Following Approval of Standby Fee, proposes to update references from §50.302, the Texas Water Code, to new §49.452.

Section 293.148, relating to Termination of Standby Fees, proposes to add drainage related fees to the procedure for termination of standby fees and to establish criteria for terminating such fees.

Section 293.149, relating to Prior Standby Fees, is proposed to be repealed. This section was originally promulgated to implement the "grandfather" provisions in HB 1333, 71st Legislature, 1989, which substantially amended §50.056 of the Texas Water Code to authorize water control and improvement districts and municipal utility districts to adopt and impose standby fees under certain circumstances with the approval of the commission. House Bill 1333 specifically provided that the amendments applied only to standby fees adopted on or after the effective date of the bill and also provided for review of prior standby fees by the commission upon request by a property owner.

Senate Bill 626, 74th Legislature, repealed §50.056 of the Texas Water Code and enacted a new §49.231, concerning Standby Fees. Effective September 1, 1995, §49.231(c) requires any district within the meaning of §49.002(a) (1) that provides or proposes to provide retail water, sewer, or drainage services to apply for commission approval before adopting or imposing a standby fee. Unlike the standby fee legislation enacted by the legislature in 1989, SB 626 does not contain a "grandfather" clause exempting prior standby fees that have not been previously approved by the commission from the requirements of new §49.231, the Texas Water Code.

New proposed §293.149, relating to Deed Restrictions, would establish that standby fees and associated liens which are authorized by recorded deed restrictions or covenants shall be enforceable in accordance with their terms and applicable general law and shall not be subject to review and approval by the commission. New proposed §290.150, relating to Variance Provisions, would establish that a district may request a variance to §293.142(a) and (c), relating to Application Requirements for Imposition of Standby Fees to be Used to Supplement the Debt Service Account, and §293.143(b), (c), and (d), relating to Application Requirements for Imposition of Standby Fees to be Used to Supplement the Operation and Maintenance Fund. These proposed sections are not new; they have only been reorganized and renumbered to correspond with the proposed repeal of §293.149.

Section 293.152, relating to Form of Notice of a Public Hearing on Adoption of Standby Fees, is proposed to be repealed because the form for providing notice of the commission hearing regarding action on a district's application for approval to levy standby fees would be provided by the Chief Clerk of the commission.

Section 293.171, relating to Definition of Terms, proposes to clarify that a charge for making a connection to a district's system that does not exceed three times the actual cost is not considered to be an impact fee.

Section 293.172, relating to Information Required to Accompany Applications for Approval of Impact Fees, proposes to change references from the Texas Water Commission to the Texas Natural Resource Conservation Commission. Section 293.173, relating to Impact Fee Notice Actions and Requirements, proposes to require that the district shall serve notice in the form provided by the Chief Clerk. Section 293.177, relating to Form of Notice of a Public Hearing on the Levy of Impact Fees, is therefore proposed to be repealed. The proposed revisions in §293.173(d) would also allow the district to serve notice to property owners as reflected by the county tax rolls or the appraisal district's property rolls, whichever is more current.

Section 293.180, relating to Appeal of a Decision of the Board of Municipal Utility District Regarding Facilities Constructed for the District, is proposed to be amended to allow for notice to be served by the district in a form provided by the Chief Clerk to property owners as reflected in the county tax rolls or appraisal district's roll, whichever is more current. Therefore, §293.180(d), relating to form of notice of a public hearing on appeal of a decision of the board, is proposed to be eliminated.

Proposed amendments to §293.201, relating to District Acquisition of Road Utility District Powers, and §293.202, relating to Application Requirements for Commission Approval, would reflect the current statutes in the Transportation Code; would change the references from the

State Highway and Public Transportation Commission to the Texas Department of Transportation; and would change references from the Texas Water Commission to the Texas Natural Resource Conservation Commission.

It is proposed that §§293.301-293.311, relating to Procedures and Design Criteria for Approval of Water System Projects be repealed because they duplicate the procedures and design criteria for approval of water system projects now contained in §§290.38-290.47 of this title, relating to Rules and Regulations for Public Water Systems.

Section 293.331, relating to Procedures and Design Criteria for Approval of Wastewater System Projects, is also proposed to be repealed because it duplicates the procedures and design criteria for approval of wastewater system projects now contained in Chapter 317 of this title, relating to Design Criteria for Sewerage Systems.

Section 293.341, relating to Conditions and Procedures for Abbreviated Review, is also proposed to be repealed because it has been incorporated into Chapter 317 of this title, relating to Design Criteria for Sewerage Systems, in a separate rulemaking.

Section 293.343, relating to Filing of Plans and Specifications with Commission Offices, is also proposed to be repealed because it duplicates the intent of §293.62 of this title relating to Construction Related Documents to be Filed with the Commission.

Proposed amendments to §§293.361-293.365 would eliminate references to the Acts of the 64th Legislature, Regular Session, 1975, Chapter 284, and would change the reference from the Texas Water Commission to the Texas Natural Resource Conservation Commission. The proposed amendments would also eliminate the references to the old statute and change them to the Texas Water Code, Chapter 151. Section 293.365 would also be amended to reference the procedural rules of the commission and to eliminate the various chapters of the code previously applicable.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that, for the first five-year period these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effects on state government will be a reduction in cost due to the elimination of the requirement for commission review of the issuance of revenue bonds reviewed by and sold to the Texas Water Development Board or the Farmers Home Administration of the United States Department of Agriculture. An additional cost is imposed on the state due to the new requirement to process applications for long-term revenue notes issued by districts and applications for use of maintenance tax proceeds by districts. The additional workload should be substantially offset by the anticipated cost savings and no significant net fiscal implications are expected. Some districts, which are units of local government, will realize a reduction in cost to issue bonds since commission review and approval is no longer necessary. Additionally, districts selling long-term revenue notes will be required to apply to the commission at an estimated cost of \$500 to \$5,000 per application.

Mr. Minick also has determined that, for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be the clarification of existing state regulations for districts, increased consistency between state regulations and statutory authority, and more consistent management of the financial operations of districts. There are no economic costs anticipated for any person required to comply with these sections as proposed.

Written comments may be mailed to Lutrecia B. Oshoko, TNRCC Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-5687; or e-mailed to LOSHOKO@smtpgate.tnrc.state.tx.us. All comments should reference Rule Log Number 95162-293-WT. Comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information, please contact Sam Jones, Water Utilities Division, at (512) 239-6167.

The Commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The main purpose of the rules is to implement Senate Bill 626, enacted by the 74th legislature, 1995. The rules will substantially advance this specific purpose by changing the cites from the repealed Chapter 50, Water Code to the new Chapter

49, Water Code and amending the rules where necessary to reflect changes in the statutes as more fully described herein. Promulgation and enforcement of these rules will not affect private real property.

## General Provisions

### • 30 TAC §§293.1, 293.3, 293.4, 293.6

The amendments are proposed under Texas Water Code, §§5.103, 5.105, and 5.235, which provides the TNRCC with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

There are no other rules, codes or statutes that will be affected by this proposal.

#### *§293.1. Objective and Scope of Rules; Meaning of Certain Words.*

(a) The Texas **Natural Resource Conservation** [Water] Commission (**commission**) has the statutory duty and responsibility to create, supervise, and dissolve certain water and water related districts and to approve the issuance and sale of bonds for district improvements in accordance with the Texas Water Code. This chapter, adopted pursuant to §§5.103, 5.105, and 5.235 of the Texas Water Code, shall govern the creation, supervision and dissolution of **all general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.** [the following kinds of districts:]

[(1) regional districts for water, sanitary sewer, and wastewater drainage created under the Texas Water Code, Chapter 50;

[(2) water control and improvement districts created under the Texas Water Code, Chapter 51;

[(3) underground water conservation districts created under the Texas Water Code, Chapter 52;

[(4) municipal utility district created under the Texas Water Code, Chapter 54;

[(5) regional plan implementation agencies created under the Texas Water Code, Chapter 54, §54.037;

[(6) irrigation districts created under the Texas Water Code, Chapter 58;

[(7) special utility districts created under the Texas Water Code, Chapter 65;

[(8) storm water control districts created under the Texas Water Code, Chapter 66; and

[(9) all other general and special law districts subject to and within the applicable limits of the jurisdiction of the commission.]

(b) This chapter shall govern the conversion of districts into municipal utility districts as provided in the Water Code, §§54.030-54.036], and the inspection and approval of water and sewer facilities pursuant to Acts of the 69th Legislature, 1985, Chapter 178, §12 (Texas Civil Statutes, Article 4477-1, as amended)].

#### *§293.3. Continuing Right of Supervision of Districts and Authorities Created Under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution.*

(a) The powers and duties of all districts and authorities created under the Texas Constitution, Article III, §52, [(subsection (b), subdivisions (1) and (2)),] and Article XVI, §59, are subject to the continuing right of supervision of the State of Texas, by and through the commission or its successor, **and this supervision may include but is not limited to the authority to:** [The commission may:]

(1) inquire into the competence, fitness, and reputation of the officers and directors of any district **or authority**;

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

(4) institute investigations and hearings; [using examiners appointed by the commission; and]

(5) issue rules necessary to supervise the districts **and authorities, except that such rules shall not apply to water quality ordinances adopted by any river authority which meet or exceed minimum requirements established by the Texas Natural Resource Conservation Commission; and**

(6) **the right of supervision granted herein shall not apply to matters relating to electric utility operations.**

**(b) the commission shall prepare and submit to the governor, lieutenant governor, and speaker of the house a report of any findings made under this section.**

*§293.4. Public Records.*

(a) Audits on file with a district and all other records and information as set forth in the Texas Water Code, **§49.194, [§50.054]** shall be maintained in the district office and shall be available to the public during normal business hours as provided in Texas **Government Code, Chapter 552** [Civil Statutes, Article 6252-17a, §3].

(b) All records and information required by law to be filed with the commission shall be available for public inspection during the office hours of the commission [as provided in the Texas Water Code, §50.105].

*§293.6. Applications Processing Requirements.* Except as otherwise provided in this chapter, all applications for commission actions authorized by the Texas Water Code and this chapter are subject to and governed by Chapter 281 of this title (relating to Applications Processing) which provides procedures and schedules for processing all applications by the commission, **and Chapter 50 of this title (relating to Action on Applications) and Chapter 55 of this title (relating to Request for Contested Case Hearings) as applicable.**

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604117 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Creation of Water Districts

### • 30 TAC §§293.11-293.18

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.11. Information Required to Accompany Applications for Creation of Districts.*

*§293.12. Fees and Deposits.*

*§293.13. Special Considerations for Water District Creation.*

*§293.14. Creation Hearing Notice Actions and Requirements.*

*§293.15. Commission Actions Following the Creation Hearing.*

*§293.16. District Actions Following Creation.*

*§293.17. Addition of Sewer and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts.*

*§293.18. Form of Notice of a Public Hearing on the Creation of a Water District.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604116 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



### • 30 TAC §§293.11-293.15

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.11. Information Required to Accompany Applications for Creation of Districts.*

(a) Creation applications for all types of districts shall contain the following:

(1) \$700 non refundable filing fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, pursuant to Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, §42.042 have been followed.

(3) if city consent was obtained pursuant to paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code, §54.016(e);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of filing creation petition and report with appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement as appropriate to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) other related information as required by the executive director.

(b) Creation applications for Chapter 36, Texas Water Code, Groundwater Conservation Districts shall contain the items listed in subsection (a) of this section and the following items:

(1) a petition containing the matters required by Texas Water Code, §36.013, signed by the majority of the landowners in the proposed district, or if there are more than 50 landowners, at least 50 of those landowners. The petition shall include the following:

(A) the name of the proposed district;

(B) the area and boundaries of the proposed district, including a map generally outlining the boundaries of the proposed district;

(C) the purpose or purposes of the proposed district;

(D) a statement of the general nature of any projects proposed to be undertaken by the district, the necessity and feasibility of the work, and the estimated cost of those projects according to the petitioners if the projects are to be funded by the issuance of bonds or notes; and

(E) any additional terms or conditions that limit the powers of the proposed district from those authorized in Chapter 36, Texas Water Code.

(2) evidence that the boundaries are coterminous with or inside the boundaries of a delineated groundwater management area, critical area, or underground water reservoir or subdivision thereof. A groundwater conservation district may include all or part of one or more counties, cities, districts, or other political subdivision and may consist of separate bodies of land within a groundwater management area, critical area, or underground water reservoir or subdivision thereof separated by land not included in the proposed district. Evidence shall show:

(A) a rule adopted by the commission designating a groundwater management area as provided in the Texas Water Code, §35.004, and §§293.21-293.25 of this title (relating to Designation of Groundwater Management Areas), designating a critical area as provided under the Texas Water Code, §§35.007-35.012, or an order designating delineation of an underground water reservoir or subdivision thereof; or

(B) if part of the proposed district is not included within either a delineated groundwater management area, critical area, or underground water reservoir or a subdivision thereof, the petition may also contain a request (meeting the requirements of the Texas Water Code, §35.005 and §§293.21-293.25 of this title) to create or alter the boundaries of a management area. If such a request is made, it may be acted upon separately by the commission from the petition for the creation of the proposed district;

(3) a map showing the proposed district's boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a vicinity map (22-24 inches by 36 inches or in a digital data electronic format) showing as appropriate the location of municipalities, highways, roads, and other improvements, together with the areal extent of groundwater aquifers, reservoirs, or subdivisions thereof, and showing the location of known recharge (i.e., outcrops of aquifer units, karst features, etc.) or discharge (i.e., known seeps, springs, etc.) features, and any other information pertinent to the creation of the proposed district;

(5) a geologic/hydrologic report including as appropriate:

(A) the purpose or purposes of the proposed district and its management planning objectives/goals;

(B) a description of the existing area, conditions, topography, economic endeavors which rely heavily upon groundwater, and any proposed improvements;

(C) a description of the groundwater resources, including the characteristics (i.e., recharge/discharge features, depth of usable groundwater, etc.) of individual aquifers within the proposed district;

(D) complete justification for the creation of the proposed district supported by evidence that the district is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(E) if the proposed district is located in a designated critical area, a description of how the proposed projects will address issues identified within the critical area;

(F) the existing and projected land use in the proposed district;

(G) the existing and projected groundwater quality, quantity, availability, and usage within the proposed district, including any foreseeable quality, quantity, availability, and usage issues as identified by the petitioners;

(H) the existing and projected population;

(I) an evaluation of the effect the proposed district and its programs will have within the district on the following:

- (i) land elevation;
- (ii) subsidence;
- (iii) groundwater levels;
- (iv) groundwater conservation and availability;
- (v) groundwater quality;
- (vi) monitoring of ambient groundwater conditions;
- (vii) groundwater educational initiatives;

(J) financial information including the following:

- (i) the projected maintenance tax rate, under Texas Water Code, §36.020, which should not exceed 50 cents on each \$100 of assessed valuation;
- (ii) the proposed budget of revenues and expenses for the district;
- (iii) an evaluation of the effect the district and its programs will have on the total tax assessments on all land within the district, including a discussion of current and projected tax rates;
- (iv) tentative itemized cost estimates of the proposed projects and itemized cost summary for anticipated bond issue requirements;

(K) if water supply utility services are proposed:

- (i) an evaluation of the availability of comparable service from other entities, including, but not limited to, water districts, water supply corporations, municipalities, and regional authorities;
- (ii) complete justification, supported by evidence, for the necessity and feasibility of the proposed district to provide water supply services;
- (iii) the current and projected water rates in the proposed district;
- (iv) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirements; and
- (v) any other related technical information as required by the executive director;

(6) a certificate by the county tax assessor(s) indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioners to be the majority of the landowners within the proposed district, then the petitioners shall file with the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioners and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the proposed district;

(7) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, and in accordance with Texas Water Code, §§36.051(b), 36.058, and 36.059(b) for appointment of directors; and

(8) any other data as the executive director may require.

(c) Creation applications for Chapter 51, Texas Water Code, Water Control and Improvement Districts within two or more

counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by Texas Water Code, §51.013, requesting creation signed by majority of persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail;

(F) statement of estimated cost of project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

- (i) land elevation;
- (ii) subsidence;
- (iii) groundwater level within the region;
- (iv) recharge capability of a groundwater source;
- (v) natural run-off rates and drainage;
- (vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district and will further the public welfare.

(6) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall file with the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §§51.072 and 49.052; and

(8) other information as required by the executive director.

(d) Creation applications for Chapter 54, Texas Water Code, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by Texas Water Code, §54.014 and §54.015 signed by persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by county tax rolls, if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

- (A) name of district;
- (B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;
- (C) necessity for the work;
- (D) statement of the general nature of work proposed;
- (E) statement of estimated cost of project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

- (i) land elevation;
- (ii) subsidence;
- (iii) groundwater level within the region;
- (iv) recharge capability of a groundwater source;
- (v) natural run-off rates and drainage;
- (vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the

petitioner(s) shall file with the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district pursuant to Texas Water Code, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that provisions of Texas Water Code, §54.016 have been followed;

(8) if city consent was obtained pursuant to paragraph (7) of this subsection, then provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code, §54.016(e);

(C) evidence that the city consent provides for the notice to buyers of land required by Texas Water Code, §49.452(d)-(n) and (p), and §54.016(h)(4)(A), and complies with Texas Water Code, §54.016(h)(4)(B) by including in the required filings with the appropriate county clerk or clerks the information required by Texas Water Code, §54.016(h)(4)(A) and the provisions of Texas Water Code, §§49.455(c)-(j);

(9) the petitioners for districts proposed to be created within the corporate boundaries of a municipality should show that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in the Local Government Code, §402.014;

(10) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with Texas Water Code, §§54.102 and 49.052; and

(11) other data and information as the executive director may require.

(e) Creation applications for Chapter 55, Texas Water Code, Water Improvement Districts within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by Texas Water Code, §55.040 signed by persons holding title to more than 50% of all land in proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall file with the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional informa-

tion required by the executive director necessary to show accurately the ownership of the land to be included in the district; and

(6) other data and information as the executive director may require.

(f) Creation applications for Chapter 58, Texas Water Code, Irrigation Districts within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by the Texas Water Code §58.013 and §58.014 signed by persons holding title to land representing a total value of more than 50% of value of all land in proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project.

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage;

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall file with the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for Chapter 59, Texas Water Code, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by Texas Water Code, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or ETJ the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;



(D) name of the petitioner(s);

(E) name of the proposed district;

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included.

(2) evidence that a copy of the petition was filed with city clerk in each city where proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or ETJ of a city is proposed, documentation of city consent or documentation of having followed the process outlined in Texas Water Code, §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by Texas Water Code, §§59.021 and 49.052; and

(6) other information as the executive director may require.

(h) Creation applications for Chapter 65, Texas Water Code, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by Texas Water Code, §§65.014 and 65.015, signed by the president and secretary of the board of directors of the water supply corporation, and stating that the water supply corporation, acting through its board of directors, has found that it is necessary and desirable for the water supply corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a

recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a registered professional engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board.

(E) if the proposed district also seeks approval of an impact fee, the resolution should also include a request for approval of an impact fee and state the amount of the requested fee.

(2) the legal description accompanying the resolution requesting conversion of a water supply corporation, as defined in the Texas Water Code, §65.001(10), to a special utility district shall conform to the legal description of the service area of the water supply corporation as such service area appears in the certificate of public convenience and necessity issued by the commission or by the Public Utility Commission of Texas to the water supply corporation. Any area of the water supply corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of proposed district as described in the petition;

(4) a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

- (i) land elevation;
- (ii) subsidence;
- (iii) groundwater level within the region;
- (iv) recharge capability of a groundwater source;
- (v) natural run-off rates and drainage;
- (vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity issued by the Texas Natural Resource Conservation Commission or its predecessor agency to the water supply corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply corporation, which shows an affirmative vote of its membership to:

(A) authorize conversion to a special utility district operating pursuant to Texas Water Code, Chapter 65;

(B) approve the dissolution of the water supply corporation at such time as creation of the special utility district is approved by the commission;

(C) approve the conveyance of all the assets and debts of the water supply corporation to the special utility district upon dissolution; and

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §§65.102 and 49.052 where applicable;

(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.110 of this title (relating to Report of Sale, Merger or Consolidation) and §291.111 of this title (relating to Transfer of Certificates of Convenience and Necessity); and

(12) other information as the executive director requires.

(i) Creation applications for Chapter 66, Texas Water Code, Stormwater Control Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by Texas Water Code, §§66.014, 66.015 and 66.016 requesting creation of a stormwater control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including but not limited to federal, state or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage;

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities;

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with Texas Water Code, §§66.102 and 49.052 where applicable; and

(5) other data as the executive director may require.

(j) Creation application for Chapter 375, Local Government Code, Municipal Management Districts shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, or lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) include name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District";

(E) list proposed initial directors and experience and term of each; and,

(F) include a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Chapter 375, Local Government Code including budget, statement of expenses revenues and sources of such revenues;

(3) a certificate by the county tax assessor indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall file with the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the county tax rolls as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district.

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with §375.063 of the Texas Local Government Code.

#### *§293.12. Creation Hearing Notice Actions and Requirements.*

(a) The chief clerk of the commission shall set the petition for hearing by the commission and issue notice thereof.

(b) The hearing notice actions and requirements for Texas Water Code, Chapter 36, Groundwater Conservation Districts, are as follows:

(1) notice must be published not later than the 30th day before the date of the hearing in at least one newspaper with general circulation in the county or counties in which the proposed district is to be located;

(2) posted on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located; and

(3) if a petition for the creation of a groundwater conservation district contains a request to create or alter the boundaries of a groundwater management area in all or part of the proposed district, the notice must also be given in accordance with the requirements of Texas Water Code, §35.006 and §§293.21-293.25 of this title (relating to Designation of Groundwater Management Areas);

(c) The hearing notice actions and requirements for Texas Water Code Chapter 51, multi-county Water Control & Improvement Districts, and for Chapter 58, multi-county Irrigation Districts are as follows:

(1) The commission shall prepare one original and three copies of the notice for each county and send to the county clerk of each county in which the proposed district may be located. The county clerk shall retain one copy and deliver the original and two

copies to the county sheriff;

(2) The sheriff of each county shall post one copy at the courthouse door of that county 15 days before the hearing and publish one in a newspaper of general circulation in that county once a week for two consecutive weeks. The first publication shall be at least 20 days before the hearing.

(d) The hearing notice actions and requirements for Texas Water Code, Chapter 54, Municipal Utility Districts and Chapter 59, Regional Districts are as follows:

(1) The commission shall send a copy of the notice of hearing to all cities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The commission shall prepare a certificate indicating that notice was properly mailed to all these cities.

(2) The commission shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the county or counties in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 30 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all fee simple landowners, as reflected on the county tax rolls, whose property is located within the proposed district, except those who have signed the petition for creation at least 30 days prior to the date of the commission hearing. Ownership of the property shall be certified by the tax assessor and collector from the tax rolls as of the date of filing of the petition with the commission.

(e) The hearing actions and notice requirements for Texas Water Code, Chapter 55, Water Improvement Districts to be located in more than one county are as follows:

(1) the commission shall send a copy of the notice of hearing to the commissioners court of each county where land in the proposed district is located.

(2) The county clerk of each county shall post notice of the time and place of the hearing at the courthouse door.

(f) The hearing actions and notice requirements for Texas Water Code, Chapter 65, Special Utility Districts notice of the creation and transfer of the certificate of convenience and necessity, and for approval of an impact fee, if applicable, shall be accomplished as follows:

(1) The commission shall send a copy of the notice of hearing to all cities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The commission shall prepare a certificate indicating that notice was properly mailed to all these cities.

(2) The commission shall send a copy of the notice to the Public Utility Commission.

(3) The commission shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the county or counties in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 14 days prior to the date of the commission hearing.

(B) unless waived by executive director, mailed to customers of the water supply corporation and other affected parties at least 120 days prior to the date of the hearing including the following:

- (i) name and business address of the district;
- (ii) a description of the service area involved;
- (iii) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and
- (iv) a statement that persons may attend the hearing and participate in the process.

(C) Impact fee notice to be mailed to owners of property within the proposed district, except customers of the water supply corporation, at least 30 days prior to the date of the commission hearing, if the application for conversion concurrently request approval of an impact fee.

(g) The hearing action and notice requirements for Texas Water Code, Chapter 66, Stormwater Control Districts, are that the commission shall send a copy of the notice of hearing to the petitioners, or their agents, who shall cause the same to be published in a newspaper with general circulation in the county or counties in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 30 days prior to the date of the commission hearing.

(h) The hearing action and notice requirements for Local Government Code, Chapter 375, Municipal Management Districts are as follows:

(1) The commission shall send a copy of the notice of hearing to all counties in which the proposed district is located and all municipalities which have extraterritorial jurisdiction in the county or counties in which the proposed district is located and which have formally requested notice of creation of all districts in their county or counties. The commission shall prepare a certificate indicating that notice was properly mailed to any such counties and/or municipalities.

(2) The commission shall send a copy of the notice of hearing to the petitioners, or their agents, who shall:

(A) cause the notice to be published in a newspaper with general circulation in the municipality in which the proposed district is located once a week for two consecutive weeks with the first publication being at least 31 days prior to the date of the commission hearing;

(B) send the notice of the hearing by certified mail, return receipt requested, to all property owners within the district at least 30 days before the hearing.

#### *§293.13. Commission Actions Following Creation Hearing.*

(a) If the commission finds that the petition does not conform to the requirements of the applicable statutes the commission shall deny the petition. With respect to regional plan implementation agencies, the commission will consider the regional plan filed with the petition in connection with its findings.

(b) If the commission grants the petition for creation:

(1) the commission shall issue an order including a finding that the project meets applicable statutory requirements;

(2) if the commission finds that any of the lands to be included in the district will not be benefitted by the creation of the district, the commission shall exclude the lands not to be benefitted and shall redefine the boundaries of the proposed district to include only those lands that will receive benefits from the district;

(3) the commission shall appoint directors as provided in applicable statutes, who shall serve until permanent directors are elected and qualified;

(c) A copy of the order of the commission granting or denying the petition shall be mailed by the commission to each city having extraterritorial jurisdiction and/or to each county.

#### *§293.14. District Reporting Actions Following Creation.*

(a) A certified copy of the order canvassing results of the confirmation election shall be recorded in the office of the county clerk of each county in which a portion of the district lies and shall be filed with the executive director.

(b) The governing board of the district shall file with the commission's executive director the information required by §293.92 of this title (relating to Additional Reports and Information Required of Certain Districts) and a certificate from the county clerk of each county in which all or part of the district is located showing compliance with Texas Water Code, §49.455. The certificate shall show on its face the time and date of the confirmation election, and the time and date that the information required by Texas Water Code, §49.455, was filed with the county clerk(s).

#### *§293.15. Addition of Wastewater and/or Drainage Powers and Conversion of Districts into Municipal Utility Districts.*

(a) Any water improvement district, water control and improvement district, fresh water supply district, levee improvement district, irrigation district or any other conservation and reclamation district or any special utility district created under the Texas Constitution, Article XVI, §59, may be converted into a municipal utility district operating under the Texas Water Code, Chapter 54 or obtain additional wastewater and/or drainage powers.

(b) The application shall be accompanied by the following:

(1) a certified copy of the resolution adopted by the board of directors requesting the commission to hold a hearing on the question of conversion of the district or the addition of wastewater and/or drainage powers for the district;

(2) a \$700 filing fee plus the cost of required notice, if any;

(3) unless waived by the executive director, a preliminary plan (22-24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain, and any other information pertinent to the project;

(4) unless waived by the executive director, a preliminary engineering report including:

(A) a description of existing area, conditions, topography and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements, if any and itemized cost summary for anticipated bond issue requirements;

(F) projected tax rate and water and wastewater rates; and

(G) total tax assessments on all land within the district.

(5) other data and information as the executive director may require.

(c) Prior to the hearing, the following requirements shall be met with evidence of such compliance submitted to the commission at or prior to the hearing:

(1) Notice of the hearing in a form approved by the commission shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located. The notice shall be published once a week for two consecutive weeks with the first publication to be made not less than 30 days before the time set for the hearing. The notice shall:

(A) state the time and place of the hearing;

(B) set out the resolution adopted by the district in full; and

(C) notify all interested persons to appear and offer testimony for or against the proposed contained in the resolution.

(2) at least 30 days before the date of the hearing, notice of the hearing shall be sent by certified mail, return receipt requested, to all fee simple landowners, as reflected on the county tax rolls, whose property is located within the proposed district unless good cause is shown why such notice by mail should not be given.

(3) ownership of the property shall be certified by the tax assessor and collector from tax rolls or as reflected by the records of the appraisal district, whichever is more current, as of the date of the filing of the resolution with the commission.

(4) the district shall file its resolution requesting conversion or additional powers with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction any part of the district is located, concurrently with filing its application for conversion with the commission.

(d) A special utility district formed pursuant to the Texas Water Code, Chapter 65, which applies for conversion to a district having taxing authority that provides water, wastewater or other public utility services, must comply with the requirements of Local Government Code, §42.042.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604094 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Designation of **Groundwater** [Underground Water] Management Areas

### • 30 TAC §§293.21, 293.22-293.25

The amendment and new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

#### *§293.21. Designation of **Groundwater** [Underground Water] Management Area **Through Rulemaking.***

(a) These sections only apply to the designation of **groundwater** [underground water] management areas as authorized by Water Code, §35.004 [§52.024], but shall not apply to proceedings for the designation of **groundwater** [underground water] management areas in progress on the effective date of these sections.

(b) Designation of a **groundwater** [an underground water] management area is a separate proceeding from that for creation of a **groundwater** [an underground water] conservation district.

(c) In accordance with Water Code, **§35.004** [§52.024], on its own motion or on receiving a petition, the commission **may initiate a rulemaking** [, after notice and hearing, will determine whether] to designate a **groundwater** [an underground water] management area. **Through the rulemaking process, the** [The] commission will determine the boundaries of such a management area with the objective of providing the most suitable area for the management of the **groundwater** [underground water] resources of the part of the state where a **groundwater** [an underground water] conservation district is or may be located. To the extent feasible, the management area will coincide with the boundaries of a **groundwater** [an underground water] reservoir or a subdivision thereof. The commission may also consider other factors in determining the boundaries of the management area, such as the boundaries of other political subdivisions and the appropriateness of the size and configuration of the management area to a **groundwater** [an underground water] conservation district's performance of its duties under Water Code, **§§36.101-36.121** [§§52.151-52.173].

(d) Upon the request of the commission or any person interested in a petition to designate a **groundwater** [an underground water] management area, the executive director will prepare available evidence relating to the configuration of a **groundwater** [an underground water] management area. The [executive director's] evidence **prepared by the executive director shall** [will] include information concerning the existence, configuration, and characteristics of a **groundwater** [an underground water] reservoir or subdivision thereof. **The evidence prepared by the executive director shall be made part of the rulemaking record.**

(e) **The commission shall designate groundwater management areas using the procedures applicable to rulemaking under the Administrative Procedure Act (Subchapter B, Chapter 2001, Government Code) except where such procedures conflict with those set forth in the Texas Water Code, Chapter 35.** [The commission will consider the evidence prepared by the executive director and all other evidence admitted in the proceeding in deciding whether to designate an underground water management area as well as the boundaries of such a management area.]

(f) (No change.)

#### *§293.22. Petition for Adoption of Rules Designating a Groundwater Management Area.*

(a) A petition may be submitted to the commission for the sole purpose of requesting that the commission designate a management area for all or part of one or more counties.

(b) A petition filed pursuant to this section must be signed by:

(1) a majority of the landowners in the proposed management area; or

(2) if there are more than 50 landowners in the proposed management area, the petition must be signed by at least 50 of those landowners.

(c) A petition filed pursuant to this section must contain the following statement: "Petitioners request that *the Texas* Natural Resource Conservation Commission designate a groundwater management area to include all or part of \_\_\_\_\_ County (Counties). The management area shall be designated with the objective of providing the most suitable area for the management of groundwater resources of the part of the state in which a district is to be located. Petitioners understand that this petition requests only the designation of a management area, but that all or part of the land in the management area designated may later be added to an existing groundwater conservation district or become a new groundwater conservation district as provided by Chapter 36 of the Texas Water Code."

(d) A petition shall include a map that shows the location of the proposed management area and may include any other information desired by the petitioners concerning the proposed management area.

(e) The petitioners shall file the petition with the executive director.

(f) The petitioners shall supply any additional information requested by the commission or the executive director.

*§293.23. Commission Consideration of Petition for Adoption of Rules Designating a Groundwater Management Area.* Within 60 days of the receipt of a Petition To Designate a Groundwater Management Area the commission shall initiate a rulemaking proceeding or deny the petition. If the commission denies the petition, it shall issue an order which sets forth the reasons for denying the petition.

*§293.24. Notice of Commission Consideration of Final Adoption of Rules Designating a Groundwater Management Area.*

(a) In addition to the notice prescribed by the Administrative Procedure Act (Subchapter B, Chapter 2001, Government Code), the petitioners shall have notice published in at least one newspaper with general circulation in the county or counties in which the proposed management area is to be located. Notice must be published not later than the 30th day before the date set for the commission to consider the final adoption of the rules designating the management area.

(b) The notice must include:

(1) a statement of the general purpose and effect of designating the proposed management area;

(2) a map generally outlining the boundaries of the proposed management area or notice of the location at which a copy of the map may be examined or obtained; and

(3) the time and place at which the commission will consider the final adoption of rules designating the management area.

(c) If the commission initiates the rulemaking proceeding on its own motion, the commission shall give the same notice as required to be given by the petitioner under this section.

*§293.25. Alteration of Groundwater Management Area.* In accordance with Water Code, §35.004, on its own motion or on receiving a petition, the commission, after notice and hearing, may initiate a rulemaking proceeding to alter the boundaries of a designated management area as required by changed or future conditions and as justified by factual data. A petition for alteration of management area boundaries must allege in detail the facts and circumstances making alteration necessary and be accompanied by a \$100 filing fee and petition recording fee of \$1.00 per page.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604096 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

## Designation of Underground Water Areas

### • 30 TAC §§293.22-293.24

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.22. Notice of Hearing to Designate an Underground Water Management Area.*

*§293.23. Alteration of Underground Water Management Area.*

*§293.24. Commission Order Following a Hearing upon a Petition to Designate an Underground Water Management Area.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604115 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

## Appointment of Directors

### • 30 TAC §§293.32-293.35

The amendments and new section are proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.32. Qualifications of Directors.*

(a) Unless otherwise provided, for an applicant for appointment as a director to receive consideration, the following qualifications shall apply.

(1) (No change.)

(2) A director of a regional district created for the purposes defined under the Water Code, **§59.004** [50.454] must be at least **18** [21] years old and a resident of this state, but need not be a landowner or qualified voter within the district.

(3)-(4) (No change.)

**(5) a director of a groundwater conservation district must be a registered voter in the precinct that the person represents pursuant to Texas Water Code, §36.059(b).**

**(6) [(5)] a director shall not be a developer of property in the district, or be related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or other person providing professional services to the district. [be an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district.]**

**(7) a director shall not be an employee of any developer of property in the district, or any director, manager, engineer, attorney, or other person providing professional services to the district, or a developer of property in the district in connection with the district or property located in the district.**

(b) As used in this section, a developer of property in the district means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or [of] any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, [and] streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (See Water Code, **§49.052(d)** [§50.026(d), 51.0721(d) and 54.1021].)

*§293.33. Commission Appointment of Directors.* Requests for Appointment shall be accompanied by the following:

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

**(4) certified mail receipt verifying that notice of the application for appointment of directors was sent to the district's official address and each director as shown on the district's latest registration form.**

**(5) [(4)] a filing fee of \$100; and**

**(6) [(5)] any other information as the executive director may require.**

*§293.34. Form of Affidavit for Appointment as Director.* The following form of affidavit must be completed, executed, and filed with the chief clerk of the commission at least ten working days prior to the commission hearing on the appointment of such directors.  
Figure 1: 30 TAC §293.34

*§293.35. Reinstatement of a Board Member.*

(a) If a board by unanimous vote of its remaining members has removed a board member pursuant to Water Code, §49.052(g), that board member may file a written appeal with the commission within 30 days after receiving written notice of the board action. The commission may reinstate a removed director if the commission finds that the removal was unwarranted under the circumstances,

including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other facts or circumstances the commission may deem relevant.

(b) A removed board member desiring to appeal the decision of the district's board of directors shall submit an application to the executive director. The application shall consist of the following:

(1) a written request by the removed board member requesting commission review;

(2) a filing fee of \$100;

(3) copies of the district's board meeting minutes for the 12 months prior to the date of the board member's removal;

(4) a statement as to why the removed board member believes that his/her removal was unwarranted, along with supporting documentation to support the statement, including the reasons for absences, the time and place of the meetings missed, the business conducted at the meetings missed, and any other relevant facts or circumstances; and

(5) such other information which the commission considers material to a determination of whether the removed board member should be reinstated as a director of the district or the district's actions in removing the board member were warranted and reasonable.

(c) The executive director will examine the application and the facts and circumstances contained therein and will prepare a written report which will be filed with the commission. A copy of the report will be mailed to the removed board member and the directors of the district and any other interested parties.

(d) After consideration, the commission will determine whether the removed board member will or will not be reinstated. The commission will enter the appropriate order, either reinstating the applicant to the district's board of directors or confirming the board's decision to remove the board member.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604097 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

◆ ◆ ◆  
**Issuance of Bonds**

**• 30 TAC §293.41**

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.41. Approval of Engineering Projects and Issuance of Bonds.*

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

Issued in Austin, Texas, on March 25, 1996.

Earliest possible date of adoption: May 6, 1996

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



## Issuance of Bonds

- **30 TAC §§293.41-293.44, 293.46-293.48, 293.50, 293.55-293.57, 293.59, 293.60, 293.61**

The amendments and new sections are proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

### *§293.41. Approval of Projects and Issuance of Bonds.*

(a) Bonds, as referred to in this section include any bonds authorized to be issued by the Texas Water Code or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to refunding bonds, and bonds issued to and approved by the Farmers Home Administration of the United States Department of Agriculture or the Texas Water Development Board, or successor agencies. This section does apply to revenue notes as stated in §293.80(d) of this title (relating to Revenue Notes).

(b) The commission has been given the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in Water Code, §49.001(1) and other districts where specifically required by law.

(c) This section does not apply to a district if:

- (1) the boundaries include one entire county;
- (2) the district was created by special act of the legislature; and;

(A) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(B) the total taxable value of the real property and improvements to the real property zoned by the one or more home-rule municipalities for residential purposes and located within the district does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(C) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(3) the district is a special water authority as defined by Water Code, §49.001(8) or;

(4) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide water and wastewater services to residential retail customers as its principal function.

### *§293.42. Filing of Documents.*

[(a)] Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

[(b)] The applicant shall send a copy of the completed bond application report as submitted with the application for issuance of bonds, including attachments, directly to the appropriate commission field office, simultaneously with submission of the bond application package to the commission.]

*§293.43. Application Requirements.* For the approval of [engineering] projects and the issuance of bonds, a district shall submit:

(1) an application including the subject matter contained in Water Code, **§49.181**, [§50.107] together with the materials required by Water Code, **§36.171(b)** [§50.466, for Regional Districts the Texas Water Code, §51.421, for Water Control and Improvement Districts; the Texas Water Code, §52.291(b)] for **Groundwater** [Underground Water] Conservation Districts; [the Texas Water Code §54.516, for Municipal Utility Districts;] the Texas Water Code, §54.037[(f)], for Regional Plan Implementation Agencies; [the Texas Water Code, §55.503, for Water Improvement Districts; Texas Water Code, §56.2045, for Drainage Districts; Texas Water Code, §57.2075, for Levee Improvement Districts; the Texas Water Code §58.451, for Irrigation Districts; the Texas Water Code, §65.512, for Special Utility Districts; the Texas Water Code, §66.310, for Stormwater Control Districts;] and the Texas Water Code, §12.082, for Freshwater Supply Districts;

(2) (No change.)

(3) evidence acceptable to the executive director of compliance with Water Code, **§49.010**, [§50.101] and, if applicable, Water Code, §54.016, and Texas **Local Government Code, §42.042** [Civil Statutes, Article 970a, §8(b)], including consent by any city having extraterritorial jurisdiction, if not previously provided to the commission, and referencing the appropriate petition or bond application if these documents have been previously provided;

(4) (No change.)

(5) a bond application report in accordance with the applicable provisions of the "Bond Application Report Format" manual adopted by the executive director, [formally approved by the commission by minute order,] and currently in effect, which manual shall be subject to revision, as deemed necessary by the executive director, [with the formal approval of the commission by minute order]; and

(6) (No change.)

### *§293.44. Special Considerations.*

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district [engineering] project which provides water, **wastewater** [sewer] or drainage service for property owned by a developer **of property in the district**, as defined by Water Code, **§49.052(d)**. [§50.026(d)]

(2) (No change.)

(3) The cost of clearing and grubbing of district facilities easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commis-



sion. The district's share of such costs is further subject to any required developer contribution pursuant to §293. 47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations shall be determined by the amount of the estimated district share, including any required developer contribution; provided, however, that in instances where such clearing and grubbing construction contracts are let and awarded in the developer's name and the developer's aggregate [reimbursable] share of such costs, including any required developer contribution, exceeds 50% of the total construction contract costs, the competitive bidding statutes and/or regulations are not considered to be applicable.

(4)-(15) (No change.)

**(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows:**

**(A) Such costs were incurred or projected to incur during creation, and/or construction periods which includes periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district.**

**(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.**

**(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five year period for which application is made pursuant to this subsection.**

**(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.**

[(16) The district shall not program bond funds to finance operation and administrative costs except for:

[(A) deficits incurred during the period of construction prior to the issuance of the subject bonds or the net expenses expected to accrue during the period of construction after the issuance of the subject bonds but in no event shall the total period exceed 3 years;

[(B) deficits incurred for the district's share of operation and administration costs resulting from the district entering into an agreement for the construction of a Water Plant or Waste Water Treatment Plant serving or programmed to serve three thousand equivalent single family connections or more. For purposes of this paragraph, deficits shall be calculated by taking the total operating and administrative cost of the district for the period and subtracting:

[(i) revenue received which shall include but not be limited to interest earnings, rates, charges and other fees assessed by the district and

[(ii) revenue which would be received from the assessment of a \$0.25 per/\$100 assessed valuation maintenance tax during the period assuming a 100percent collection rate.

[(C) advances made to a district for operation and administrative cost prior to June 1,1993 if all of the following are true:

[(i) a reimbursement agreement was executed with the district in good faith at the time the advance was made and

[(ii) the total reimbursed does not exceed three years of actual operating and administration expenses incurred by the district.

[(D) Lease payments associated with lease/purchase agreements for central plant capacity.]

(17)-(20) (No change.)

(b) (No change.)

*§293.46. Construction Prior to Commission Approval.* The developer may proceed with financing or construction of water, wastewater and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions:

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

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. For construction contracts awarded after the effective date of this subsection (**September 5, 1986**), if substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6)-(8) (No change.)

*§293.47. Thirty Percent of District Construction Costs to be Paid by Developer.*

(a) It has been determined by experience that some portion of the cost of district water, **wastewater** [sewer] and drainage facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to districts which have a ratio of debt (including proposed debt) to certified assessed valuation of more than 10%. This section does not apply to:

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

(b) For purposes of this chapter, the following definitions shall apply:

(1) Developer is as defined in Water Code, **49.052(d)** [§50.026(d)];

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

(c) (No change.)

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, the developer shall contribute to the district's construction program an amount not less than 30percent of the construction costs for all water, **wastewater** [sewer] and drainage facilities, including attendant engineering fees and other related expenses, with the following exemptions:

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

(4) that portion of water and **wastewater** [sanitary sewer] lines from the district's boundary to the interconnect, source of water supply, or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;

(5) pump stations and force mains located within the boundaries of the district which directly connect the district's **wastewater** [sanitary sewer] system to a regional plant, regardless of whether such plant is located within or without the boundaries of the district;

(6) segments of water transmission or **wastewater** [sanitary sewer] trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;

(7) water and **wastewater** [sanitary sewer] lines serving or programmed to serve 1,000 acres or more within the district;

(8) drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2,000 acres, as the commission may deem appropriate to encourage regional drainage projects. **Construction cost paid in lieu of such a contribution does not qualify as an exemption unless the facility constructed is itself exempt;**

(9)-(10) (No change.)

**(11) lease payments for central plant capacity not included in operating expenses.**

(e)-(f) (No change.)

(g) The developer must enter into an agreement with the district, secured by a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of utility construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the letter of credit to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least **45** [30] days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least **45** [30] days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title, must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h)-(k) (No change.)

**§293.48. Street and Water, Wastewater and Drainage Utility (street and utility) [Road] Construction by Developer.** Unless street and utility [road] construction is completed within the area to be developed by the proposed bond issue, the developer must provide assurance to the satisfaction of the commission, prior to advertisement for sale of the district's bonds, that such street and utility [road] construction will be completed as hereinafter provided.

(1) The developer must enter into an agreement with the district, secured by a letter of credit, specifying that if street and

utility [road] construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and **utilities** [roads] with financing to be accomplished by utilizing the letter of credit; provided, however, the district shall not proceed in such a manner until the commission, after having given at least ten days written notice to both the district and the developer, has reviewed the matter, either on the petition of the district or on the motion of the executive director, and has approved the district's awarding of the contract and utilization of the letter of credit; and provided further, the commission may extend the time for the developer to complete the streets and **utilities** [roads] if the developer renews the letter of credit and adequately compensates the district for lost revenues and taxes resulting from failure to complete the streets and **utilities** [roads] within the specified time. In the event that the letter of credit has not been renewed or replaced 45 days prior to its expiration date, or in the event that the developer commences any proceeding, voluntary or involuntary, or any proceeding, voluntary or involuntary, is commenced against the developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the developer, or any receiver is appointed for the developer, or the developer makes a general assignment for the benefit of creditors, the district shall have the immediate right to draw down the lesser of the current cost, as estimated by the district's engineer, to construct the streets and **utilities** [roads], or the entire remaining balance of the letter of credit. The current estimated costs to construct the streets and **utilities** [roads] shall include construction contract amounts, engineering, surveying and testing fees, and a 10% contingency. The district shall deposit such funds in a separate account and shall not commit or expend such funds until the commission has held the hearing and authorized use of the funds as provided in this subsection. Within 30 days after final completion of the streets and **utilities** [roads], the district shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the developer or his designee. A district shall not allow any letter of credit to expire, except upon completion of the paving in substantial compliance with the agreement or written approval of the commission. A copy of the street and **utility** [road] construction agreement meeting the criteria specified in §293.57 of this title (relating to Form of Street and Utility Construction Agreement), the letter of credit and any amendments or renewals thereof shall be filed with the commission within ten days after their execution or receipt by the district. The letter of credit must be from a financial institution meeting the qualifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit).

(2) The developer shall include in the street and **utility** [road] construction contract a provision that places the responsibility on the contractor for repair and clean-up of broken manholes, buried valve boxes, broken **wastewater** [sewer] pipe, and all other damage to district facilities caused by construction of streets and **utilities** [roads].

(3)-(4) (No change.)

**§293.50. Developer Interest Reimbursement.**

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

(d) If otherwise determined to be feasible by the commission, time limitations on accrued developer interest shall not apply to:

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

(5) drainage channels, levees and other flood control facilities and stormwater detention facilities meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) and §293.53 of this title (relating to District Participation in Regional Drainage Systems) which are serving or are pro-

grammed to serve 2,000 acres or more **or at the discretion of the commission, areas less than 2, 000 acres, as the commission may deem appropriate to encourage regional drainage projects.**

(e) These time limitations on accrued developer interest also apply to advances made for **necessary organization and operation costs as allowed under §293.44(a)(16) of this title (relating to Special Considerations)** [organizational costs, repair costs and lease payments for central plant capacity associated with lease/purchase agreements].

*§293.55. Tax Anticipation Notes.* Tax anticipation notes may be issued by districts solely in the manner and for the purposes described in Water Code, **§49.154** [§54.304(b)], as amended. No tax anticipation notes shall be redeemed in whole or in part, out of the proceeds of a district bond issue or one or more refunding tax anticipation notes, bond anticipation or revenue notes. Such notes may bear interest as provided by law; shall mature within one year of their date of issuance; shall not be renewable or subject to extension of their maturity or redeemable or refundable out of or exchangeable for additional tax anticipation notes; and shall be secured by and paid solely out of the proceeds of taxes to be levied and collected by the district in the 12-month period succeeding their date of issuance.

*§293.56. Requirements for Letters of Credit (LOC).*

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

(d) Should the financial institution or agent deposit funds in an account in the name of the district, the district shall not commit or expend such funds until **it has received written authorization from the executive director** [the commission has held a hearing authorizing the use of said funds].

(e) (No change.)

(f) Form of Letter of Credit. The following form shall be used as a letter of credit for the financial guarantee for utilities construction and/or construction and paving of streets.  
Figure 1: 30 TAC §293.56(f)

*§293.57. Form of Street and Utility [Road] Construction Agreement.* The following form is sufficient for use as a contract between the developer and the district for street construction and paving and may be adapted to utilities construction.  
Figure 1: 30 TAC §293.57

*§293.59. Economic Feasibility of Project.*

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

(e) Combined no-growth [debt service] tax rate is the sum of the following:

(1) No-growth debt service tax rate of the district;

(2) Projected no-growth debt service tax rate of all overlapping entities specifically attributable to **water, wastewater** [sewer], drainage **that are smaller in size than a county**, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct. In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.

(3) An equivalent surcharge tax rate for water and **wastewater** [sewer] surcharge, if any;

(4) (No change.)

(5) Current or proposed **district or overlapping** maintenance tax levy, if any;

**(6) Contract tax, if any;**

**(7)[(6) ]** Less any equivalent tax rebate or other payments.

(f) Combined projected [debt service] tax rate is the sum of the following:

(1) (No change.)

(2) Projected debt service tax rate of all overlapping entities specifically attributable to water, **wastewater** [sewer], and drainage, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct.

(3) An equivalent surcharge tax rate for water and **wastewater** [sewer] surcharge, if any;

(4) (No change.)

(5) Current or proposed **district or overlapping** maintenance tax levy, if any;

**(6) Contract tax, if any;**

**(7) [(6)]** Less any equivalent tax rebate or other payment.

(g) A surcharge is a flat charge in addition to rates imposed on residents receiving water and/or **wastewater** [sewer] service from resources of a city or other entity and supplied through district facilities. Surcharge revenues are placed in the district's debt service fund and are intended to be used to meet the debt service requirement on the district's bonds.

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows:

(1) For residential development with similar house prices:  
Figure 1: 30 TAC §293.59(h)(1)

(2) For mixed-use development and diverse house prices:  
Figure 2: 30 TAC §293.59(h)(2)

(3) (No change.)

(i) For districts receiving a rebate for taxes paid to a city or other entity for water, **wastewater** [sewer], drainage or road service, the equivalent tax rebate shall be calculated as follows:  
Figure 3: 30 TAC §293.59(i)

(j) (No change.)

(k) For a district's first bond issue, the following paragraphs apply except that paragraphs (5), (6), [(7),] (8), and (10) of this subsection are only applicable to a district that has a developer as defined by the Texas Water Code **§49.052(d)** [§50.026(d)].

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

(3) The combined projected [debt service] tax rate shall not exceed the following:

(A)-(C) (No change.)

(4) The combined no-growth [debt service] tax rate shall not exceed the following:

(A)-(c) (No change.)

(5) The following applies to the tax assessor's certificate:

(A) (No change.)

(B) In determining the projected or no-growth [debt service] tax rates, a certificate of estimated assessed valuation may be used under the following conditions:

(i)-(iii) (No change.)

(iv) developed land values will not be used in the commission's analysis for lots which do not have completed water, **wastewater** [sewer], and drainage facilities and roads constructed to county or city standards, as applicable, at the time of development.

(6) At the time of **commission** approval [of the bond sale], the following shall apply:

(A) all underground water, **wastewater** [sewer], and drainage facilities to be financed with proceeds from the proposed bond issue **or necessary to serve the projected build-out used to support the feasibility of the subject bond issue**, shall be at least 95percent complete as certified by the district's engineer;

(B)-(C) (No change.)

(D) water supply, lift station, and wastewater treatment capacity needed to support the projected build-out used to support the feasibility of the subject bond application shall be existing or funds for that capacity shall be included in the bond issue or secured by a letter of credit or other acceptable guarantees approved by the **executive director** [commission]; and

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, **or necessary to serve the projected build-out used to support the feasibility of the subject bond issue**, shall be 95% complete as certified by the district's engineer. All streets and roads shall be constructed in accordance with **city or county standards**, as appropriate.

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

(11) Requirements of subsection (k)(6)(A), (C) and (E), and the requirements of subsection (k)(7) of this section shall not apply in the following cases where:

(A) the no-growth [debt service] tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed \$1.30; the no-growth [debt service] tax rate of a district providing major water and sewage facilities which it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed \$1.30, and the combined no-growth [debt service] tax rate does not exceed \$2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district; or

(B) (No change.)

(C) the district is providing water, **wastewater** [sewer], and drainage facilities and the combined no-growth [debt service] tax rate of all overlapping entities specifically attributable to water, sewage and drainage, and roads if the entity is a special district encompassing less than one county commissioner's precinct, if any, does not exceed the following:

(i)-(iii) (No change.)

(D) For the immediately preceding exceptions in subparagraph (A), or (C) of this paragraph, the developer shall provide a guarantee for its 30% share, if required pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer), in the form and manner required by subsection (g) thereof. For the immediately preceding exceptions in subparagraph (B) or (C) of this paragraph, the devel-

oper shall provide a paving guarantee pursuant to §293. 48 of this title (relating to Street and **Utilities** [Road] Construction by Developer).

(l) For a district's second and subsequent bond issues, all of the foregoing of subsection (k) of this section shall apply, and the following shall apply except that paragraphs (2), (3), (4) , and (5) of this subsection only apply to districts that have a developer as defined by [V.T.C.A.] Water Code, **§49.052(d)** [§50.026(d)] or to districts which fail to meet the criteria set out in subsection (k)(11) of this section.

(1) (No change.)

(2) The water, **wastewater** [sewer] and drainage facilities financed by the district under previous bond issues and all road and street construction to serve such connections shall be at least 95% complete as certified by the district's engineer.

(3)-(4) (No change.)

(5) The requirements of subsection (k)(10) of this section shall apply, unless the district requests and the commission, in its discretion waives such requirement for one of the following reasons:

(A) (No change.)

(B) the district **anticipates receiving** [has] an acceptable credit rating as defined in §293.47(b)(4) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) or a credit enhanced rating as defined in paragraph (5) of this subsection, **and such rating must be obtained prior to the sale of bonds**; or

(C) the district has ratio of debt to assessed valuation as provided in §293.47(a)(1) of this title.

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

(o) A district may request a variance if it does not meet the guidelines contained in subsection (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected [debt service] tax rate or the maximum combined no-growth [debt service] tax rate specified in subsection (k) of this section for Districts that have a developer and the district is financing 100% of construction costs pursuant to criteria set out in §293.47(a) of this title which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered;

(1)-(7) (No change.)

*§293.60. Conditional Approval Based on Performance of a Developer in Other District Projects.*

(a) The commission, in evaluating an application by a district for approval to reimburse construction funds to a developer, may consider the performance of the developer or related or affiliated entities in other district projects and may condition reimbursement on certain actions of the developer or related or affiliated entities.

(1) Issues which may be considered in evaluating the performance of a developer may include the past history of the developer and related or affiliated entities with respect to:

(A) payment of financial obligations including taxes, standby fees and other user fees to any district;

(B) devaluation of property values by claiming special exemptions within any district after the commission's approval of bonds in said district without compensating agreements with the district;

(C) compliance with commission rules and orders; and

(D) performance under agreements with any district including, but not limited to, cost sharing and maintenance agreements, street and road construction agreements, 30% cost participation agreements, and financial guarantees.

(2) Actions of a developer or related or affiliated entity on which reimbursement of construction funds to a developer may be conditioned include:

(A) payment of financial obligations including taxes, standby fees and other user fees to any district to which they are owed;

(B) withdrawal of a claim of special exemption which resulted in the devaluation of property in any district after the commission's approval of bonds for said district or the execution of compensating agreements for the district;

(C) compliance with commission rules and orders; and

(D) performance under existing agreements with any district including, but not limited to, cost sharing and maintenance agreements, street and road construction agreements, 30% cost participation agreements, and financial guarantees.

(b) For the purposes of this section "developer" means "developer of property in the district" as defined by Water Code, §49.052(d) and its lienholder if it is in default.

(c) For the purposes of this section "related or affiliated entities" means any entity owned in whole or majority part by the developer but does not include development lenders unless they are joint venture partners with the developer in such districts.

(d) In response to a written request, the district shall submit to the executive director information regarding the developer or related or affiliated entities, including, but not limited to, the names of principals, individuals, affiliated entities and lienholders to aid the commission's evaluation of the past history of the developer.

*§293.61. Bond Related Documents To Be Filed with the Commission.* Every district required to obtain commission approval of its projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of Projects and Issuance of Bonds), is required to file the following bond related reports and/or documents:

(1) If the commission directs funds from the bond issue to be escrowed, a certified copy of the executed escrow agreement with an authorized financial institution of the district's choice shall be filed within five days of that transaction.

(2) The district shall file with the executive director a copy of the final official statement within 30 days after the final official statement is issued. The executed contract for the sale of the bonds and debt service schedule shall be filed with the executive director within 30 days after execution of the contract.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604095 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Conditional Approval

### • 30 TAC §293.60

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.60. Conditional Approval Based on Performance of a Developer in Other District Projects.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604114 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## District Actions if the Commission Approves the Engineering Project and Issuance of Bonds

### • 30 TAC §293.61

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.61. Bond Related Documents To Be Filed with the Commission.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604113 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

**District Actions Related to Construction Projects and Purchase of Facilities** [If the Commission Approves the Engineering Project and Issuance of Bonds]

• **30 TAC §§293.62, 293.63, 293.68-293.70**

The amendments are proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.62. Construction Related Documents To Be Filed with the Commission.* Every district required to obtain commission approval of its [engineering] projects relating to the issuance and sale of bonds as indicated in §293.41 of this title (relating to Approval of [Engineering] Projects and Issuance of Bonds), is required to file the following construction related reports and/or documents:

(1) (No change.)

(2) As the construction progresses, provide to the appropriate commission field office:

(A) engineer's monthly construction progress reports and monthly pay estimates for contract partial payments within ten days after payment [together with a statement by the engineer that the contractor has been paid by the district];

(B) (No change.)

(C) copies of infiltration/exfiltration tests for **wastewater** [sanitary sewer] lines and test results of water lines prior to final construction inspection;

(D)-(F) (No change.)

(3) (No change.)

*§293.63. Contract Documents for Water District Projects.* Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply.

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

(4) **For contracts over \$25,000 the district shall** [may] require bidders to submit **certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state**[, in lieu of bid bonds,] in an amount of at least 2.0% of the total amount of the bid. If cashier's checks are required, the checks for all bidders except the three **most qualified** [low] bidders shall be returned within three days of the bid opening.

(5) (No change.)

(6) The district **may** [shall] establish criteria for acceptability of the surety company issuing payment and performance bonds including, but not limited to:

*§293.68. Document Identification.* All bond related documents submitted to the commission should be properly labeled in the upper right hand corner of the cover page with the name of the district, amount of bonds approved which included funding for the project and the date of approval. If the project is to be funded by a future bond issue, state "future bond issue" under the name of the district. [All correspondence, plans, monthly pay estimates, etc., submitted to the executive director shall be identified by the district's name, related bond issue amount and date of commission approval.]

*§293.69. Purchase of Facilities.*

(a) A district shall not purchase facilities financed or constructed by a developer, **investor owned utility or water supply corporation** in contemplation of sale to the district or assume facility contracts from the developer or reimburse the developer, **investor owned utility or water supply corporation** for funds advanced to finance construction of facilities until the commission has inspected the project, reviewed contract administration, and given written authorization to finalize the purchase or reimbursement. The commission shall inspect the facilities and, subject to the requirements contained in this subsection, issue its written approval or disapproval of such proposed purchase within 30 days after receipt of written request from a district or a district's authorized representative. The written approval shall be valid for 120 days.

(b) If the purchase of facilities or reimbursement of funds to the developer, **investor owned utility or water supply corporation** is not completed within 120 days after the date of the commission's written approval, the district shall again obtain the written approval as provided herein.

(c)-(g) (No change.)

*§293.70. Audit of Payments to Developer.*

(a) Prior to the payment of funds to a developer from bond proceeds, bond anticipation note proceeds, [or] funds to be derived from future bond proceeds, **or maintenance tax revenue** the governing board of directors of the district shall engage an auditor to perform certain agreed upon procedures applicable to all items and amounts for which a reimbursement request has been received. The auditor must be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(b) As a minimum, the following procedures shall be included to the extent applicable.

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

(5) A determination shall be made that the items and amounts to be reimbursed are appropriate and in accordance with commitments or policies of the district and interoffice memorandums, orders and rules of the Texas **Natural Resource Conservation** [Water] Commission as a result of the procedures followed and subject to such limitations as may apply.

(c) (No change.)

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604098 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

◆ ◆ ◆  
Other Actions Requiring Commission Consideration for Approval

• **30 TAC §§293.80, 293.83, 293.88**

The amendments and new sections are proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.80. Revenue Notes.*

(a) A district, as defined by Water Code, §49.001 may not execute a revenue note as described by Water Code, §49.153 for a term longer than three years unless approved by the commission.

(b) This rule does not apply to special water authorities, as defined by Water Code, §49.001.

(c) Applications for commission approval of revenue notes except as provided in subsection (d) of this section shall include the following:

(1) a resolution by the governing board requesting approval of the revenue note;

(2) documents indicating district ownership of the facility;

(3) a detailed explanation of the intended use and project to be financed, and complete justification for the proposed revenue note;

(4) a copy of the district's current Rate Order or Amended Rate Order;

(5) a proposed amortization schedule for the revenue note;

(6) a draft of the proposed revenue note;

(7) copies of the district's current operating budget and estimates of revenues and expenses for the years associated with the revenue note;

(8) copies of all existing notes, liens or judgements against revenues associated with the facility;

(9) a filing fee in the amount of \$100; and

(10) other information as the executive director may require.

(d) Revenue notes proceeds of which are used to reimburse a developer as defined in the Water Code, §49.052(d) are subject to §§293.41-293.61 of this title (relating to the Issuance of Bonds).

*§293.83. District Use of Surplus Funds For Any Purpose And Use of Maintenance Tax Revenue for Certain Purposes.*

(a) Except as provided in paragraphs (3), (4) and (5) of subsection (c) of this section, a district contemplating use of surplus bond funds, interest earned on invested bond proceeds, grants, contributions by others for costs sharing of facilities constructed with bond funds and litigation settlements related to projects financed by bond proceeds must receive approval from the executive director prior to obligation of these funds for any purpose.

(b) A district contemplating the use of operation and maintenance tax revenue for reimbursement to a developer (as

defined in Water Code, §49.052(d)), of property, or its assigns, for planning, construction, or acquiring facilities must receive approval from the executive director.

(c) Application requirements are:

(1) For engineering projects, the following documents shall be filed:

(A) a resolution by the governing board requesting approval of the project;

(B) construction plans and specifications approved by all agencies having jurisdictional responsibilities;

(C) a detailed explanation of the project;

(D) a detailed cost summary;

(E) if developer reimbursement from an operation and maintenance tax; operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(F)[(E)] the number of utility connections to be added (if applicable) and area served;

(G) [(F)] engineer's certification as to the availability and sufficiency of water supply and wastewater treatment capacities to serve such additional connections;

(H)[(G)] a written statement from district's bookkeeper stating the amount and source of funding including how available funds were generated;

(I)[(H)] the 100-year flood data for area to be served if not previously provided;

(J) evidence of compliance with the requirements of §§293.41-293.60 of this title.

(K)[(I)] a filing fee in the amount of \$100; and

(L)[(J)] other information as the executive director or the commission may require.

(2) For expenditures other than engineering projects, the following documents shall be filed:

(A) a resolution by the governing board requesting approval of the expenditure;

(B) a complete justification and explanation of purpose for which the funds are proposed for expenditure;

(C) if developer reimbursement from an operation and maintenance tax, operating budgets showing revenues and expenditures over the years from which the operation and maintenance tax revenue is derived;

(D)[(C)] other information as the executive director or the commission may require; and

(E)[(D)] a filing fee in the amount of \$100.

(3) Subject to the requirements prescribed in subsection (4) of this section, a district which has a no-growth tax rate of \$2.00 per \$100 assessed valuation or less calculated by dividing its average annual debt service on existing tax supported debt by current taxable assessed valuation/100, may use surplus funds for improvements necessary to serve development within the district as follows without further approval:

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

(C) pump stations and force mains located within the boundaries of the district which directly connect the districts **waste-water** [sanitary sewer] system to a regional plant.

(D) alternate water supply interconnects between two or more districts.

(4) Districts contemplating the use of surplus funds as provided in paragraph (3) of this section must:

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

(C) report expenditures of all surplus funds in their annual audit report **in the notes to the financial statements disclosing any amounts transferred among the funds including the use of surplus funds and the authority for such transfers** [in accordance with the Annual Audit Report Requirements].

(d) [(5)] A district may transfer surplus interest earnings on invested bond proceeds to its debt service account without Texas **Natural Resource Conservation** [Water] Commission approval if permitted by its bond covenants and if such funds are not committed for other purposes.

*§293.88. Petition for Authorization to Proceed in Federal Bankruptcy.*

(a) A district desiring to proceed under the Federal Bankruptcy Code, Chapter 9 (11 United States Code §§901-946) or any other federal bankruptcy law shall submit an application requesting authorization pursuant to Water Code, **§49.456** [§50.060]. The application shall consist of the following:

(1)-(11) (No change.)

(b) (No change.)

[(c)] Except as otherwise expressly provided herein, Chapters 261, 263, 265, 267, 269, 271 and 273 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; and Procedures After Final Decision) shall be applicable. The commission may compel attendance of the members of the governing body of the district, consultants of the district, developers and other parties, as deemed appropriate, at any hearing.]

(c) [(d)] If, after hearing and consideration of all evidence, the commission determines that the district cannot, through the full exercise of its rights and powers under the law of this state, reasonably expect to meet its debts and other obligations as they mature, the commission may authorize the district to proceed in bankruptcy.

(d) [(e)] If, after hearing, the commission determines that the district can, through the full exercise of its rights and powers under

the laws of this state, reasonably expect to meet its debt and other obligations as they mature, the commission shall deny the district's application and shall order the district to adopt specific measures to generate sufficient revenues to meet its obligations. The commission shall also require the district to file periodic reports on the implementation of the measures required by the commission and its current financial condition.

(e) **The commission may assess additional fees adequate to cover its cost in administering this section.**

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604099

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Reports

### • 30 TAC §§293.91-293.97

The amendments are proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

#### *§293.91. Reporting by Districts.*

(a) All districts are required to file certain documents and reports with the executive director by the Texas Water Code, Chapter **49** [50], as follows:

(1) a certified copy of the order or [on] legislative act creating the district within 60 days after the date the district is created;

(2) (No change. )

(3) a written notification to the executive director of the name, **mailing** address and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment;

[(4) an immediate written notification to the executive director of any newly elected or appointed director when there is a change of directors due to resignation or death;]

(4) [(5)] a certified copy of the audit report within 15 days after the date of completion of any audit of the affairs of the district, other than the annual audit required by Water Code, **§49.191** [50.371];

(5) [(6)] an annual audit report, financial report, or financial dormancy affidavit, as required by subsections (c), (e) and (f) of §293.94 of this title (relating to Annual financial Reporting Requirements); and

(6) [(7)] an annual filing affidavit, as required by subsection (g) of §293.94 of this title (relating to Annual financial Reporting Requirements), and Water Code, **§49.194(d)** [50.374(d)], certifying that all filings of copies of the annual audit report, an annual financial dormancy affidavit, or annual financial report, as applicable, have been completed.

(b) (No change.)



*§293.92. Additional Reports and Information Required of Certain Districts.* A district which is providing or proposing to provide, as the district's principal function, water, **wastewater** [sewer], drainage, and flood control or protection facilities or services, or any of these facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or in part from taxes of the district, or by imposition of a standby fee to household or commercial users, other than agricultural or irrigation users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part shall file with the commission such additional reports and information as may be required by the executive director from time to time.

(1) The information shall include:

(A)-(C) (No change.)

(D) The total amount of bonds which have been approved by the voters and which may be issued by the district **(excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity)**;

(E) the aggregate initial principal amount of all bonds of the district payable in whole or in part from taxes (excluding refunding bonds and any bonds or portion of bonds payable solely from revenues received or expected to be received pursuant to a contract with a governmental entity) which have been previously issued **and remain outstanding**;

(F) [a statement as to] whether a standby fee is imposed by the district, and, if so, the amount of the standby fee;

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

(I) the particular form of Notice to Purchasers required by **Water Code, §49.452** [50.301] to be furnished by a seller to a purchaser of real property in that district completed by the district with all information required to be furnished by the district; and

(J) (No change.)

(K) If a district has not yet levied taxes, a statement to such effect together with the district's projected rate of debt service tax estimated at the time of creation of the district shall be substituted for subparagraphs (C) and (D) of this paragraph.

(i)-(iv) (No change.)

(v) If a district fails to file the information required by **this section** [the Texas Water Code, §50.302,] in the time required, the executive director may request the attorney general, or the district or county attorney of the county in which the district is located, to seek a writ of mandamus to force the governing board of the district to prepare and file the necessary information.

(vi) (No change.)

*§293.93. Special Reporting Requirements for Districts Subject to Consent Agreements Made Pursuant to the Texas Water Code, §54.016(h).* Districts created subject to the consent agreements authorized by the Texas Water Code, §54.016(h), shall file the duly

affirmed and acknowledged statement, and the map or plat, required by Water Code, §54.016(h)(4)(B), together with the reports and information required by Water Code, **§49.455(c)-(j)**, [§50.302(c)-(j)] as incorporated by reference into Water Code, **§54.016(h)(4)(B)** [54.106(h)(4)(B)].

*§293.94. Annual Financial Reporting Requirements.*

(a) Statutory provisions for fiscal accountability. All districts **as defined in Water Code, §49.001(a)** are required to comply with the provisions of Water Code, **§§49.191-49.198** [§§50.371-50.381] requiring every district to either have performed an annual audit or to submit an annual financial dormancy affidavit or an annual financial report.

(b) Accounting and auditing manuals. All districts shall comply with the accounting and auditing manuals adopted by the executive director [and formally approved by the commission by minute order]. The manuals shall consist of two publications, "Water District Accounting Manual" and "Annual Audit Report Requirements". The manuals may be revised as necessary by the executive director [and formally approved by the commission by minute order].

(c) Duty to audit. The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district. The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. [An audit performed by the state auditor pursuant to the Texas Water Code, §50.381, will not relieve the districts and river authorities listed therein from the annual audit requirements of the Texas Water Code, §50.371.] Districts with limited or no financial activity may qualify to prepare an unaudited financial report, pursuant to subsection (e) of this section, or a financial dormancy affidavit, pursuant to subsection (f) of this section.

(d) Form of audit. The audit shall be performed according to generally accepted auditing standards adopted by the American Institute of Certified Public Accountants [and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles]. **Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.**

(e) Audit report exemption.

(1) A district **that is not collecting taxes** may elect to **file** [prepare an] annual [unaudited] financial **reports with the executive director** [report] in lieu of **the district's compliance with Water Code, §49.191** [an audit] provided:

(A) (No change.)

(B) the district did not have gross receipts from operations, [tax collections,] loans, or contributions in excess of **\$100,000** [20,000] during the fiscal period; and

(C) the district's cash and temporary investments were not in excess of **\$100,000** [50,000] at any time during the fiscal period.

(2) The annual financial report **must be accompanied by an** [and filing] affidavit, **attesting to the accuracy and authenticity of the financial report, signed by a duly authorized representative of the district, which conforms** [must conform] with the format prescribed by the executive director. Financial report and filing affidavit forms may be obtained from the **executive director**

[commission's District Administration Section of the Water Utilities Division].

**(3) Districts governed by this section are subject to periodic audits by the executive director.**

(f) Financially dormant districts.

(1) (No change.)

(2) The required financial dormancy and filing affidavit shall be prepared in a format prescribed by the executive director **and shall be submitted for filing by a duly authorized representative of the district.** [and shall be signed by the board's current president or chairman of the board, a member of the board designated by the presiding officer, the board's attorney, or by a county judge who is presiding as chairman of the governing board.] Financial dormancy affidavit forms may be obtained from the commission's District Administration Section.

**(3) Districts governed by this section are subject to periodic audits by the executive director.**

(g) Annual filing affidavit. Each district shall file annually with the executive director a filing affidavit which affirms that copies of the district's audit report, financial report, or financial dormancy affidavit have been filed within the district's business office [and with the local city or county as required by subsection (h) of this section]. Each district that files a financial report or a financial dormancy affidavit will find that the annual filing affidavit has been incorporated within those documents, so a separate filing affidavit form is not necessary. However, each district that files an audit report must execute and submit, together with the audit, an annual filing affidavit when the audit is filed with the executive director. Annual filing affidavits must conform to the format prescribed by the executive director. Filing affidavit forms may be obtained from the **executive director** [commission's Districts Administration Section].

(h) Filing of audits, financial reports, and affidavits.

(1) Filing dates.

(A) Audits. Audit reports and the annual filing affidavits that must accompany those reports shall be filed as prescribed by paragraph (2) of this subsection within 135 days after the close of the district's fiscal year [unless the audit is performed by the state auditor, in which case it will be filed within 380 days after the close of the district's fiscal year]. The district's governing board shall approve the audit before a copy of the report is filed with the executive director; however, the governing board's refusal to approve the audit shall not extend the filing deadline for the audit report. If the governing board refuses to approve the audit, the board shall file with the executive director by the prescribed filing date the report and a statement providing the reasons for the board's refusal to approve the report.

(B) Financial reports. Financial reports and the annual filing affidavits **in a format prescribed by the executive director, must be on file with the executive director** [that are integrated within the reports shall be filed] as prescribed by paragraph (2) of this subsection within 45 days after the close of the district's fiscal year.

(C) (No change.)

(2) Filing locations. Copies of the audit, financial report, or financial dormancy affidavit described in subsections (c), (e) and (f) of this section shall be filed annually with the executive director, **and** within the district's office [and with the city secretary or other designated city official in whose corporate limits or extraterritorial jurisdiction the district is located. If the district is not located within

the corporate limits or extraterritorial jurisdiction of a city, the audit, financial report, or annual financial dormancy affidavit shall be filed annually with the clerk of the county within which the district is located; provided, however, this subsection shall not apply to any district which is located within all or parts of more than two counties; however, each such district shall file a copy of its annual audit, annual financial report, or annual financial dormancy affidavit with the county clerk of the county within which the greater part of the district resides].

(i) Review by executive director.

(1) The executive director **may** [shall] review the audit report of each district, and if the executive director has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes or commission rules, or if the executive director has any recommendations, he shall notify the governing board of the district.

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

(j) Penalties for Noncompliance.

(1) (No change.)

(2) **A district that fails to comply with the filing provisions of Texas Water Code, Chapter 49, may be** [Any district that violates the provisions of the Texas Water Code, Chapter 50, Subchapter K, is] subject to a civil penalty of **up to** [not less than \$50 nor more than] \$100 **per** [a] day for each [act of violation and for each] day **the district wilfully continues to violate these provisions** [a violation continues. Before a district is subject to the penalty provided in this subsection, it must continue to violate this subchapter] after receipt of written notice of violation from the executive director [sent] by certified mail, return receipt requested. **The state may sue to recover the penalty.**

*§293.95. Access to and Maintenance of District Records.*

(a) The governing board of each district shall ensure that the minutes of governing board meetings and the district's accounting records are prepared on a timely basis and maintained in an orderly manner throughout the district's fiscal year in accordance with the guidelines set forth in the publication Water District Accounting Manual. Each district shall preserve its minutes, contracts, notices, accounts, and all other records or certified copies thereof in a safe place, suitable for public inspection. All records, including the fiscal records, shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purpose of recording its fiscal affairs and for preparing an audit, during which time the fiscal records are under the control of the district's auditor. Those districts proposing to provide or actually providing water and **wastewater** [sewer] services or either of these services to household users as the principal function of the district and having at least 100 qualified electors residing in the district shall maintain all district fiscal records in a district office located in the district.

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

*§293.96. Miscellaneous Reports to be Filed with the Executive Director.*

(a) (No change.)

(b) Certified copy of water and **wastewater** [sewer] rate order adopted by the board and any amendments thereto, shall be filed within 30 days of adoption.

*§293.97. Adoption of Fiscal Year and Operating Budget.*

(a) (No change.)

(b) Operating Budget. Prior to the start of a fiscal year, [or as soon thereafter as possible,] the governing board of each active district shall adopt an operating budget for the upcoming fiscal year. The adopted budget and any subsequent amendments shall be passed and approved by a resolution of the governing board and shall be made a part of the governing board minutes. Budget amendments may be made from time to time in the discretion of the governing board. The adopted budget is not a spending limitation imposed by the commission. However, the governing board may adopt rules to limit the spending authority of the district officers in relation to the budget. A comparison of the actual operating results to the adopted budget, as amended, shall be presented in the annual report of each district. The budgetary comparison statement shall be included either within the audited financial statements or within a supplementary section.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604104 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## District Name Changes and Posting Signs

### • 30 TAC §§293.101-293.103

The amendment and new sections are proposed under the Texas Water Code, §5.103 and §5.105, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

#### *§293.101. Posting Signs [Notice] in the District.*

(a) Any district which is providing or proposing to provide as the district's principal function, water, **wastewater**, [and sewer] **drainage, flood control or protection facilities or services**, or any [either] of these **facilities or services that have been financed or are proposed to be financed with bonds of the district payable in whole or part from taxes of the district, or by imposition of a standby fee, if any, to household or commercial users, other than agricultural, irrigation, or industrial users, and which district includes less than all the territory in at least one county and which, if located within the corporate area of a city, includes less than 75 percent of the incorporated area of the city or which is located outside the corporate area of a city in whole or in substantial part**, shall within 30 days after the creation, **whether by commission order, county commissioner's court, or act of the legislature**, of the district, post signs indicating the existence of the district at two or more principal entrances to the district.

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

#### *§293.102. District Name Change.*

(a) A district may apply to the commission for approval of a name change.

(1) The district must have reasonable grounds for requesting the change.

(2) The new name must be generally descriptive of the location of the district followed by the type of district as provided by the title of the chapter of the Texas Water Code concerning the district. If a district is located wholly within one county that contains more than one district of that type, the district may be differentiated,

if necessary by adding to the new name the proper consecutive number. The new name may not be the same as the name of any other district.

(b) Applications requesting approval of a name change shall include the following:

(1) A resolution by the governing board requesting commission approval of the name change which indicates the proposed new name;

(2) The reason for the requested change;

(3) A \$100 filing fee;

(4) Any other information that the executive director may require.

(c) District action following commission approval of the name change.

(1) Within 30 days of the date of commission approval, the district shall publish notice of the name change in a newspaper or newspapers of general circulation in the county or counties in which the district is located.

(2) Within 30 days of the date of commission approval, the district shall give notice of the name change by mail to utility customers, permittees, if any, and the county clerk of all counties in which a portion of the district lies; and, to the extent practicable, to the holders of bonds, obligations, and other indebtedness of the district.

(3) A suggested form of notice is given in §293.103 of this title (relating to Form of Notice for Name Change).

(4) If applicable, the district shall post new name signs pursuant to §293.101 of this title (relating to Posting Signs in the District).

*§293.103. Form of Notice for Name Change.* The following form may be used to provide notice of a name change pursuant to §293.102(c) of this title (relating to District Name Change):

Figure 1: 30 TAC §293.103

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604100 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Utility [Sanitary Sewer] System Rules and Regulations

### • 30 TAC §293.111

The amendment is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

#### *§293.111. Utility [Sanitary Sewer] Service Lines and Connection.*

(a) All water districts which provide or propose to provide **utility** [sanitary sewer] service shall:

(1) adopt regulations governing the construction of commercial and/or household [sewer] service lines and connections to the district's [sanitary sewer] **utility** system;

(2) complete and have operable **utility** [sewer collection] lines and a treatment plant before any [sewer] connections are authorized;

(3) (No change.)

(4) require that the district's inspector certify in writing that the [sewer] connection was installed in accordance with accepted construction practices and in compliance with the district's regulations governing this type of work;

(5) (No change.)

(6) upon submission of each bond application, document to the executive director that a **utility** [sewer] service connection inspection program is in force for all new connections and that certification by the district's inspector of compliance with district rules is on file in the district's records;

(b) Suggested regulations for **wastewater systems** may be obtained from the executive director upon request. Strict enforcement of such regulations will eliminate infiltration/inflow problems in service lines, sewage treatment plant overload and, as a result, reduce operation and maintenance costs.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604103 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Fire Department Projects

### • 30 TAC §§293.121, 293.123, 293.124

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.121. Approval of Fire Department Projects.* The executive director has the responsibility of reviewing and the commission the responsibility of approving all fire department plans and, if applicable, the issuance of bonds to finance implementation of an approved fire protection plan for all districts **as defined by Water Code, §49.001** [created pursuant to the Texas Constitution, Article XVI, §59].

*§293.123. Application Requirements for Fire Department Plan Approval.* Applications for fire department plan approval shall include:

(1) application by the district's board covering the subject matter contained in Water Code, **§49.351** [50.055], as amended, and specifically identifying:

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

(2) (No change.)

(3) certified copy of the district board's order adopting a fire protection plan and/or any proposed contract to be entered into by the district for this purpose, together with evidence that a hearing in conformance with Water Code, **§49.351** [50.055](g), was held at

which any person residing in the district could present testimony for or against the proposed plan and/or any proposed contract;

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

(7) financial presentation for the district board's adopted plan which shall include, but not be limited to:

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

(E) a draft of the proposed contract for services and the plan that describes in detail the facilities and equipment to be devoted to service to the district, including financial requirements under the proposed contract, if the district proposes to contract with any other person to perform fire fighting services within the district under Water Code, **§49.351(e)** [50.055(e)]; and,

(F) (No change.)

(8) (No change.)

### *§293.124. Application Requirements for Fire Department Financing.*

(a) Applications submitted under the provisions of Water Code, **§49.351** [50.055], for establishment of a fire department and the issuance of bonds to finance the construction and purchase of necessary buildings, facilities, and equipment for this purpose shall be considered by the commission only as a separate application for the issuance of bonds; therefore, the request for approval to issue bonds to establish or expand a fire department should not be integrated into a bond application submitted under §293.43 of this title (relating to Application Requirements) for engineering projects except for those water supply and distribution facilities necessary to support the fire protection plan approved by the voters.

(b) (No change.)

(c) The application shall address the applicable subject matter contained in Water Code, **§49.351** [50.055], including the method proposed for district fire protection, the type and amount of bonds requested and/or the board adopted method of financing the project from other resources.

(d) (No change.)

(e) The district shall also include a certified copy of the district board's order canvassing election returns as voted by the district's electorate on the propositions specified under Water Code, **§49.351(i)** [50.055(i)].

(f)-(j) (No change.)

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604102 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



## Dissolution of Districts

### • 30 TAC §§293.131, 293.132, 293.134

The amendments are proposed under Texas Water Code §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.131. Authorization for Dissolution of Water District by the [Texas Water] Commission.*

(a) **Chapters 36 and 49** [Chapter 50] , **Subchapters I and K** [G], being the Texas Water Code, §§**36, 301-36.307 and 49.321-49.327** [50.251-50.258] authorize the [Texas Water] commission to dissolve any district **as defined in Water Code, §49.001(1)** [or authority created under the Texas Water Code or by the authority of the Texas Constitution, Article III, §52 and Article XVI, §59,] which is inactive for a period of **three consecutive years for a groundwater conservation district or five consecutive years for other water districts** and has no outstanding bonded indebtedness. **A groundwater conservation district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved.**

(b) (No change.)

(c) The application must include a petition on the part of the party requesting dissolution including a statement of the reasons that a dissolution is desirable or necessary, and contain a statement that the district has been financially dormant for the preceding **three-year period for a groundwater conservation district or the preceding five-year period for other water districts** and has performed no functions for the **five previous preceding** years and has no outstanding bonded indebtedness. **A groundwater conservation district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved.**

(d) If the petition is filed by a landowner, a director of the district, or other interested party, the application must contain certified copies of dormancy affidavits filed pursuant to Water Code, §**49.197** [50.377], for **three years for a groundwater conservation district or five years for other water districts** preceding the year in which the application is filed. [If filed by the executive director, the application will contain a statement that the required dormancy affidavits are on file in the official records of the Texas Water Commission.]

(e)-(f) (No change.)

(g) **The executive director may initiate procedures to dissolve a district without financial dormancy affidavits on file if:**

(1) **The district has failed to comply with the reporting requirements of this chapter for the previous five year period;**

(2) **attempts to contact directors, interested parties or anyone with knowledge of district's financial activity have failed; and,**

(3) **the state comptroller of public accounts has filed a certificate certifying that the district has never registered any bonds with the comptroller.**

*§293.132. Notice of Hearing.* A notice of the hearing upon the proposed dissolution of a district will be given by the commission and will describe the reasons for the proceeding, as required by Water Code, . **302 for groundwater conservation districts and §49.322 for other water districts** [50.252]. The notice will be published once each week for two consecutive weeks before the day of hearing in a newspaper having general circulation in the county or counties in which the district is located. The first publication will be 30 days before the day of the hearing. Notice of the hearing will be given by the commission by first class mail addressed to the directors of the district according to the last record on file with the commission.

*§293.134. Order of Dissolution.* Following the hearing, the commission will enter an appropriate order that the district be dissolved or that the district not be dissolved if it finds that the district has performed none of the functions for which it was created for a period of five consecutive years before the day of the proceeding and the district has no outstanding bonded indebtedness. If the district is ordered dissolved, the order shall contain a provision that the assets of the district shall escheat to the State of Texas and shall be administered by the state treasurer and disposed of in the manner provided by **Property Code, Chapter 74** [Texas Civil Statutes, Article 3270a, 1925, as amended].

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604101 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

◆ ◆ ◆  
Application for Approval of Standby Fees

• **30 TAC §§293.141-293.143, 293.145, 293.146, 293.148-293.150**

The amendments and new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policies of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.141. Standby Fees.*

(a) **Districts, as defined by Water Code, §49.001, which provide or propose to provide retail potable water, wastewater, or drainage services may, with commission approval, adopt and levy standby fees.**

(b)[(a)] Standby fee, as authorized by Water Code, §**49.231**, means a charge, other than a tax, imposed on undeveloped property for the availability of water, wastewater, **or drainage** facilities and services. Standby fee does not mean an impact fee, tap fee, or a connection fee.

(c)[(b)] Undeveloped property means a tract, lot or reserve in the district to which no **vertical improvements and** water or wastewater connections **or drainage services** have been made to serve the property utilizing substantially the full amount of the capacity allocated to the property as shown in the district's **land development plan submitted with creation applications**, bond applications, **(including supporting documents)** or by written commitment and for which:

(1) **any portion of** water, [or] wastewater, **or drainage** facilities and services are available;

(2) water supply or wastewater treatment plant capacity **or drainage capacity** sufficient to serve **any portion of** the property is available; or

(3) major water supply lines or wastewater collection lines **or major drainage outfall facilities** with capacity sufficient to serve **any portion of** the property are available.

(d)[(c)] A district may not impose a **debt service** standby fee unless the facilities and services available to the property were

financed by the district; **however, a district may impose a standby fee for operating and maintaining facilities that it has not financed.**

(e)[(d)] Standby fees levied under this section may be used for the purpose of paying the following costs:

(1) operation and maintenance costs associated with maintaining the facilities [financed by the district]; and/or

(2) debt service payments [on bonds outstanding] for water[, and] wastewater, **or drainage** facilities.

(f)[(e)] Commission approval and adoption of standby fees is valid for a period of not more than three **successive** years. A district may charge a standby fee of an amount not to exceed the maximum amount approved by the commission. A district may file an application to increase or renew its standby fee at any time.

(g)[(f)] It is not required that standby fees be uniform throughout the district, only that the fees fairly allocate the cost of district [-financed] water, [and] wastewater, **and drainage** facilities and service among property owners of the district. The standby fee may be a single fee expressed as a unit cost per single family equivalent connection or the fee per single family equivalent unit may be divided into separate components (**tiers**) [for] **such as** water distribution facilities, water supply facilities, wastewater collection facilities, [or] wastewater treatment facilities, **internal drainage facilities, or outfall drainage facilities.**

(h)[(g)] Standby fees **as approved by the commission** may be **collected** [imposed] for monthly, quarterly or annual billing periods, [as approved by the commission,] but may not be imposed retroactively or in arrears beyond January 1 of the calendar year in which such standby fees are adopted **unless authorized by the commission.** A district may not require payment of standby fees in advance of a current billing period [as established and approved by the commission].

(i)[(h)] To the extent that standby fees are imposed and collected in contravention of applicable rules or order(s) of the commission, the commission may require that such improperly collected fees be refunded, together with interest thereon.

*§293.142. Application Requirements for Imposition of Standby Fees to be Used to Supplement the Debt Service Account.*

(a) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenues to supplement the debt service account:

(1) the district's combined [debt service] tax rate as defined under §293.59(f) of this title (relating to Economic Feasibility of Projects) and calculated as described in subsection (c)(1) of this section, excepting standby fees and developer contribution, over the period over which standby fees are to be levied exceeds those limits defined under §293.59(k)(3) of this title, for the county in which the district is situated. Any increases in assessed valuation used in calculating the combined projected [debt service] tax rate shall be based on historical growth rates experienced in the district; and

(2) (No change.)

(b) (No change.)

(c) Standby fee amounts shall be determined so that:

(1) the resultant combined projected [debt service] tax rate as defined under §293.59(f) of this title is not less than those limits defined under §293.59(k)(3) of this title when calculated based on:

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

(2) the total taxes and standby fee assessment for debt service for water, [and] wastewater, **and drainage** facilities against undeveloped property does not exceed the amount of district taxes levied for water, [and] wastewater, **and drainage** facilities against a comparable lot or tract with completed improvements. In the absence of a comparable lot or tract with completed improvements, the projected value of the lot or tract with completed improvements as contained in the district's bond application(s) shall be used; and

(3) (No change.)

(d) Applications shall include the following items.

(1) (No change.)

(2) a certified copy of a board resolution which shall contain a request for commission approval of the fee and shall state the designated fund to which standby fee revenues will be applied, the amount of the fee, **the three years for which the fee is proposed for levy**, [the intervals or periods of billing for such standby fee, either monthly, quarterly or annually, ] and the projected debt service **and operations and maintenance tax rates** [rate] the district expects to achieve through the levy of the standby fee;

[(3) a copy of the proposed notice of hearing.]

(3)[(4)] a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information cannot be located in commission files, the commission staff may require that water, [and/or] wastewater, **and drainage** facilities serving those properties and financed by the district be identified. An accounting of district-financed water supply, [and] wastewater treatment facilities, **and drainage facilities** and capacity available in those facilities may also be required;

(4)[(5)] a copy of the most recent tax appraisal roll by the Central Appraisal District accompanied by a table prepared by the district which delineates the district's assessed valuation. The table should list each component of the district's assessed valuation attributable to raw acreage and acreage with and without vertical improvements. The component attributable to acreage with vertical improvements should be further divided into single family residential sections according to similar home value, multi-family sections, commercial sections, industrial sections, and any other type of vertical development existing within the district;

(5) [(6)] a table which compares the cumulative buildout for the current fiscal year to the cumulative buildout for the same fiscal year projected at the time of the bond issue. Indicate according to section, the number of lots, homes, commercial and industrial development, etc., and raw acreage within the district;

(6)[(7)] A list by source of the following tax rates:

(A) the combined [debt service] tax rate projected at the time of the most recent bond issue;

(B) the actual combined [debt service] tax rate set for the current fiscal year; and

(C) the combined [debt service] tax rate projected over the period during which the standby fee will be levied. Any increases in assessed valuation for this calculation should be based on the district's historical growth rate.

(7)[(8)] a debt service schedule for all bonds outstanding.

(8)[(9)] a cash flow table based on the reduced combined projected [debt service] tax rate the district expects to achieve through the standby fee levy. Distinguish between debt service revenues obtained from taxes and other sources of debt service

revenues. List as a separate column the additional revenues required to produce the reduced debt service tax rate. Any increases in assessed valuation shown on this table should be based on the historical buildout rate experienced in the district. If the district's assessed valuation has been declining, show the assessed valuation as fixed at the current value. The district shall use the latest certified assessed value or estimated assessed valuation provided by the central appraisal district.

(9)[(10)] a comparison of the actual versus the approved cost summary from the district's most recent bond issue with separate costs shown for water, wastewater and drainage projects.

(10)[(11)] any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein.

(11)[(12)] in the event that a district provides the commission with a written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (4), and (5) [(6)] of this subsection except that the district shall provide a copy of the most recent tax appraisal roll by the central appraisal district.

*§293.143. Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund.*

(a) In calculating standby fees to be used to supplement the operation and maintenance fund, the following definitions apply.

(1) (No change.)

(2) Active connection, as used in this section, means a lot or tract with vertical improvements and a meter in service **for which water and/or wastewater usage is billed.**

(3) Inactive connection, as used in this section, means a lot or tract **with existing vertical improvements, and** where water and/or wastewater connections were made but **such** service is not being provided **nor billed.**[and no bill for services is being sent]

(4) Undeveloped property (expressed in terms of connections), as used in this section, means a tract, lot or reserve in the district to which no water or wastewater connections **or drainage services** exist and for which:

(A) water, [or] wastewater, **or drainage** facilities and services are available;

(B) water supply, [or] wastewater treatment plant capacity, **or drainage capacity** sufficient to serve **any portion of** the property is available; or

(C) major water supply lines, [or] wastewater collection lines, **or drainage facilities** with capacity sufficient to serve **any portion of** the property are available.

(b) Only those districts which meet the following criteria may seek approval from the commission to use standby fee revenue to supplement the operation and maintenance fund:

(1) all capitalized funds or reserves for operating purposes which were derived from all prior bond issues (except an amount not to exceed a three-month reserve) have been depleted or are projected to be depleted within **the three years in which the standby fees are to be levied** [a reasonable time]; and

(2) the operation and maintenance fund is operating at a deficit or is projected to operate at a deficit within **the three years in which the standby fees are to be levied** [a reasonable time period] with:

(A) rates for the first 10,000 gallons of water and **wastewater** [sewer] usage for residential users (or equal or greater amounts for other users) which exceed \$30.00; or

(B) **rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed \$22.00 if the district is a provider of only water or wastewater service.**

[(B) if the district is a provider of only water or sewer services, rates for the first 10,000 gallons of usage for residential users (or equal or greater amounts for other users) which exceed \$22.00.]

(c) In determining the revenue to be generated from water and **wastewater** [sewer] rates if such rates do not equal or exceed the rates stated in subsection (b)(2) of this section, an amount will be added to the minimum charge such that the total bill for 10,000 gallons of usage will equal the rates stated in subsection (b)(2) of this section.

(d) Standby fee amounts shall be determined so that all of the following are true:

(1) The total revenue projected to be generated from the fee is not more than that necessary to balance the projected operation and maintenance budget assuming:

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

(C) all of the water, **wastewater, or drainage** [and sewer] revenue projected for the coming year is applied toward the budget, with rates **or revenues** established or assumed at **an amount** [the rate] equal to or higher than those in the preceding subsection (b)(2) of this section; and

(D) (No change.)

[(2) The fee amount shall not exceed an amount related to the fixed operating costs for the existing water and sewer facilities;]

(2)[(3)] The fee amount shall not exceed the rate charged to active connections for 10,000 gallons actual water and **wastewater** [sewer] usage;

(3)[(4)] The fee amount equitably distributes the fixed costs of operating and maintaining the district's water, [and] wastewater, **or drainage** facilities among active connections, inactive connections, and undeveloped property owners. In the absence of an allocation of a district's budget to fixed and variable expenses in an application, the staff shall make its own determination based on a predetermined fixed and variable allocation, a copy of which shall be made available from the Districts Section. A district may submit, with supporting and substantiating documentation, an allocation specific to that district.

(e) In determining whether a district which meets the foregoing requirements be allowed to impose standby fees for operation and maintenance revenue and the amount of the standby fee levy against the various categories of development authorized to be imposed, the following factors may be considered:

(1) (No change.)

(2) the **amounts** [rates] charged or proposed to be charged for water and/or [sewage] **wastewater services** usage;

(3) (No change.)

(4) the [amount of surplus] capacity of the various components of the system;

(5) (No change.)

(6) the **amounts** [rates] charged by districts with comparable land uses;

(7) (No change.)

(f) Applications shall include the following:

(1) a filing fee of \$100;

(2) (No change.)

[(3) a copy of the proposed notice of hearing;

(3) [(4)] a proposal for the standby fee amount including substantiating calculations to show how the standby fee was derived;

(4) [(5)] a map of the district (not larger than 24 inches by 36 inches) which shall clearly designate the properties against which the proposed standby fee will be levied. If such information is not available within commission files, the commission staff may require that [district-financed] water, [and/or] wastewater, **or drainage** facilities serving those properties be identified. An accounting of [district financed] water supply, [and] wastewater treatment facilities, **or drainage facilities** and capacity available in those facilities may also be required.

(5) [(6)] a table indicating the ultimate number of connections according to section for which the district has water, [and/or] wastewater, **or drainage** facilities. Indicate active connections, inactive connections, and the number of connections attributable to undeveloped property;

(6) [(7)] a copy of the district's operating budget for the past two years and the proposed budget for the coming year. Indicate those fixed costs required to operate and maintain the water, [and] wastewater, **or drainage** facilities, including a proportionate share of consultant and organizational fees attributable to operating and maintaining the water, [and] wastewater, **or drainage** facilities and those expenses not related to operating and maintaining the district's water, [and] wastewater, **or drainage** facilities, such as [mowing of drainage ditches and] operating a recreational facility;

(7) [(8)] an indication of revenues available for operation and maintenance costs and the sources of those revenues. Include water consumption records, [and] wastewater flow records, **or drainage maintenance records** (if used in determining charge for service) for the previous two years and projected for the coming year as reflected in the proposed budget;

(8) [(9)] a certified copy of the district's most current **order establishing the water and/or [sewer] wastewater rates or drainage charges, as applicable** [rate order];

(9) [(10)] any other information as the executive director may require to assure that the fees are consistent with the criteria contained herein.

(10) [(11)] in the event that a district provides the commission with written consent of all landowners of undeveloped property in the district identified on the district's tax rolls and of all mortgagees of undeveloped property who have submitted a written request to be informed of any hearing pursuant to §293.145 of this title, (relating to Public Hearing and Notice Requirements), to the proposed levy of standby fees, the district shall be exempted from the requirements of paragraphs (3) [(4)], (5) [(6)] and (6) [(7)] of this subsection except that the district shall provide a copy of the district's operating budget for the past two years and the coming year.

#### §293.145. Public Hearing and Notice Requirements.

(a) The commission shall schedule a hearing date on its uncontested agenda and advise the district of the scheduled time and date of the hearing. If the item is contested, the commission may remand the item **for an evidentiary hearing** [to be heard before a hearings examiner].

(b) The district shall publish notice of the hearing **in a form provided by the chief clerk of the commission**. Notice of the hearing shall be published in a newspaper of general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication must occur not later than the 30th day before the date of the hearing.

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

#### §293.146. District Actions Following Approval of a Standby Fee.

(a) (No change.)

(b) The governing board of the district shall, within seven days from the date of the district's order adopting the standby fees, file with the commission's executive director and the county clerk of each county in which a portion of the district lies an update of the information required by Water Code, **§49.452** [§50.302].

#### §293.148. Termination of Standby Fees.

(a) **Commission approved** standby fees **other than those for drainage only** [for water or wastewater facilities, or both,] shall cease and no longer be valid or enforceable with respect to a particular lot or parcel at the end of the current billing period, [as approved by the commission,] during which **either** a connection is made to the district's water distribution system or wastewater collection system **and service is billed**, or [both, and] construction of the [building slab or foundation for] **vertical improvements on such lot or parcel** [improvements] is completed.

(b) **Commission approved standby fees for drainage only shall cease and no longer be valid or enforceable with respect to a particular lot or parcel at the end of the current billing period, during which construction of the vertical improvements on such lot or parcel is completed.**

§293.149. *Deed Restrictions.* Standby fees and associated liens which inure to the benefit of a district and are authorized by recorded deed restrictions or covenants shall be enforceable in accordance with their terms and applicable general law and shall not be subject to review or approval by the commission.

§293.150. *Variance Provision.* A district may request a variance to §293.142(a) and (c) of this title (relating to Application Requirements for Imposition of Standby Fees to be Used to Supplement the Debt Service Account) and §293.143(b), (c), and (d) of this title (relating to Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund) if it does not meet the guidelines contained in §293.142(a) of this title or §293.143(b) of this title; a majority of a district's board of directors finds by resolution that the district would be justified in requesting a variance; the fee was in place on August 28, 1989, and had been previously approved by the commission; and the elimination of the fee would cause a significant increase in the taxes or rates currently being assessed by the district. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance.

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



Issued in Austin, Texas, on March 25, 1996.

TRD-9604106 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



### Application for Approval of Standby Fees

#### • 30 TAC §§293.149-293.152

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.149. Prior Standby Fees.*

*§293.150. Deed Restrictions.*

*§293.151. Variance Provision.*

*§293.152. Form of Notice of a Public Hearing on Adoption of Standby Fees.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604112 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



### Petition for Approval of Impact Fees

#### • 30 TAC §§293.171-293.173

The amendments are proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

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

Impact fee—A charge or assessment imposed by a district against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. **A charge or fee by a district for construction, installation, or inspection of a tap or connection to district's water, wastewater, or drainage facilities, including all necessary service lines and meters, that:** [A tap fee is not considered an impact fee provided the tap fee is based on the reasonable cost of providing the tap-related service.]

(A) does not exceed three times the actual and reasonable costs to the district for such work; or

(B) if made to a nontaxable entity, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported bonds of the district, shall not be deemed or considered to be an impact fee.

*§293.172. Information Required to Accompany Applications for Approval of Impact Fees.* Pursuant to the Local Government Code, §395.080, a district proposing to assess impact fees shall file with the commission an application for commission review. Upon submission of an application for commission review, the executive director has the responsibility for reviewing and the commission has the responsibility for approving or denying impact fee requests by all districts created pursuant to Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution. Each application filed shall contain the following:

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

(5) A table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the Texas **Natural Resource Conservation** [Water] Commission.

(6)-(8) (No change.)

*§293.173. Impact Fee Notice Actions and Requirements.*

(a) The chief clerk of the commission shall set the petition for hearing, and [the district shall] issue notice thereof.

(b) The notice of the hearing must be published **by the district** once in a newspaper with general circulation in each county in which the district intends to levy an impact fee. The notice shall be of sufficient size to be easily legible and appear at least 30 days before the scheduled date of the hearing. An affidavit verifying publication of the notice must be filed with the commission prior to the date of the hearing.

(c) (No change.)

(d) The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the service area, [as reflected by the county tax rolls] as of the date of filing the application with the commission, unless good cause is shown why such notice should not be given. **Property ownership shall be as reflected by the county tax rolls or the records of the appraisal district for the county, whichever is more current.** The district shall **submit an affidavit certifying compliance with the requirements of this subsection to the commission at least one week prior to the commission hearing** [obtain a "certificate of mailing" from the United State Post Office to verify such mailing]. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls **or by the appraisal district for the county, as applicable**, as of the date of filing of the application with the commission.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604105 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996  
For further information, please call: (512) 239-4640

◆ ◆ ◆  
**Petition for Approval of Impact Fees**  
• 30 TAC §293.177

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.177. Form of Notice of a Public Hearing on the Levy of Impact Fees.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604111 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996  
For further information, please call: (512) 239-4640

◆ ◆ ◆  
**Appeal of Decision Regarding Facilities Constructed for a Municipal Utility District**  
• 30 TAC §293.180

The amendment is proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.180. Appeal of a Decision of the Board of Municipal Utility District Regarding Facilities Constructed for the District.*

(a) (No change.)

(b) Notice Actions and Requirements.

(1) The chief clerk of the commission shall set the petition for hearing, and [the district shall] issue notice thereof.

(2) The district shall issue notice by sending, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the district, [as reflected by the county tax rolls] as of the date of filing the application with the commission, unless good cause is shown why such notice should not be given. **Property ownership shall be as reflected by the county tax rolls or the records of the appraisal district for the county, whichever is more current.** The district shall **submit an affidavit certifying compliance with the requirements of this subsection at least one week prior to the commission hearing** [obtain a "certificate of mailing" from the United States Post Office to verify such mailing]. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls **or by the appraisal district for the county, as applicable**, as of the date of filing of the application with the commission.

(c) (No change.)

[(d) Form of Notice of a Public Hearing on Appeal of a Decision of the Board. The following form should be used to provide notice of the public hearing on a petition to appeal a decision of the board of a municipal utility district concerning the cost, purchase or use of facilities constructed for the district.]  
Figure 1: 30 TAC §293.180(d)

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604133 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996  
For further information, please call: (512) 239-4640

◆ ◆ ◆  
**Acquisition of Road Utility District Powers by Municipal Utility Districts**  
• 30 TAC §293.201, §293.202

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.201. District Acquisition of Road Utility District Powers.*

(a) **Texas Transportation Code, Chapter 441**, [Texas Civil Statutes, Article 6674r-1, (Chapter 13, Acts of the 68th Legislature, Second Called Session, 1984, as amended by Chapter 951, Acts of the 69th Legislature, 1985)] authorizes a district operating pursuant to the Texas Water Code, Chapter 54, and which has the power to levy taxes to petition the **Department of** [State Highway and Public] Transportation [Commission], after first obtaining approval of the Texas **Natural Resource Conservation** [Water] Commission, to acquire the powers granted under said Texas **Transportation Code, Chapter 441**, [Civil Statutes, Article 6674r-1.] to road utility districts, [pursuant to authority contained in the Texas Constitution, Article III, §52.] Texas **Transportation Code, §441.051** [Civil Statutes, Article 6674r-1, in §5(d)] requires the written consent of the landowners within the boundaries of the district to be given to the governing board of the district to file a petition with the **Department of** [State Highway and Public] Transportation [Commission].

(b) Authority to add road utility district powers is also given to municipal utility districts in Chapter 951, Acts of the 69th Legislature, 1985, which added §54.234 and §54.235 to the Texas Water Code. This section and §293.202 of this title (relating to Application Requirements for Commission Approval) of this chapter will provide the requirements for obtaining approval of the [Texas Water] commission to petition the **Texas Department of** [State Highway and Public] Transportation [Commission] for road utility district powers.

*§293.202. Application Requirements for Commission Approval.* A conservation and reclamation district, operating pursuant to the Texas Water Code, Chapter 54, and which has the power to levy taxes, shall file with the executive director of the Texas **Natural Resource Conservation** [Water] Commission an application which shall include the following documents, prior to petitioning the **Texas Department of** [State Highway and Public] Transportation [Commission] or road utility district powers:

(1) (No change.)

(2) a certified copy of the resolution of the governing board of the district authorizing the request for approval of the Texas **Natural Resource Conservation** [Water] Commission to petition the **Texas Department of** [State Highway and Public] Transportation [Commission] for road utility district powers;

(3)-(4) (No change.)

(5) a certified copy of the latest audit of the district performed pursuant to Water Code, §§**49.191-49.194** [50.371-50.374];

(6) for districts which have not filed an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date the district files its request for approval with the executive director of the Texas **Natural Resource Conservation** [Water] Commission;

(7) a certified copy of preliminary plans for all the facilities to be constructed, acquired, or improved by the district, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas **Transportation Code, §441.013** [Civil Statutes, §4(a), Article 6674r-1];

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

(10) any other information which may be required by the executive director of the Texas **Natural Resource Conservation** [Water] Commission; and

(11) (No change.)

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604132 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



### Procedures and Design Criteria for Approval of Water System Projects

#### • 30 TAC §§293.301-293.311

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.301. Definitions of Terms.*

*§293.302. General.*

*§293.303. Water Sources.*

*§293.304. Water Treatment.*

*§293.305. Water Distribution.*

*§293.306. Water Storage.*

*§293.307. Water System Quantity.*

*§293.308. Minimum Acceptable Operation Practices for Public Drinking Water Systems.*

*§293.309. Appendix D--Notice of Appointment.*

*§293.310. Appendix E--Approval Requirements.*

*§293.311. Appendix F--Suggested Minimum Water Main Sizes.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604135 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



### Procedures and Design Criteria for Approval of Wastewater System Projects

#### • 30 TAC §293.331

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.331. General.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604138 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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



### Abbreviated Review of Water and Wastewater Line Projects

#### • 30 TAC §293.341

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

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation

Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

*§293.341. Conditions and Procedures for Abbreviated Review.*

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604118 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996

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

◆ ◆ ◆  
Special Actions Relating to the Harris-Galveston  
Coastal Subsidence District

• 30 TAC §§293.361-293.365

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

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

[Act-Acts of the 64th Legislature, Regular Session, 1975, as amended, Chapter 284.]

Commission—The Texas **Natural Resource Conservation** [Water] Commission.

*§293.362. Request to Monitor Delivered Water.*

(a) Upon the filing of a written request pursuant to **Water Code §151.129** [the Act, §19A], with the executive director by a person ordered by the board to completely or partially discontinue the use of groundwater, the commission shall monitor the water delivered to the person from the alternative water supply as defined in **Water Code §151.129(f)** [the Act] to determine the percentage of that water supply that is surface water and the percentage that is groundwater. The request for monitoring must be filed, together with the following information, with the executive director no later than six months prior to the end of the permit year immediately following the board's order. The filing of an administratively complete request will entitle the person to monitoring not during that permit year, but during the first succeeding permit year, subject to the provisions of subsection (b) of this section. For purposes of **Water Code §151.129** [the Act, §19A], a person shall be deemed to have been ordered to completely or partially discontinue the use of groundwater the board issues a permit that results in the person's use of surface water as an alternative water supply. For purposes of **Water Code §151.129** [the Act, §19A], the request for monitoring shall be deemed made as of the first day of the permit year following the timely receipt by the executive director of an administratively complete request subject, however, to the provisions of subsection (b) of this section. The following information shall be provided to the executive director with the request for monitoring:

(1)-(7) (No change.)

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

*§293.363. Action on the Request to Monitor Delivered Water.* After an appropriate review of an administratively complete application, the executive director shall:

(1) (No change.)

(2) determine the method of investigation and monitoring consistent with good engineering practices and **Water Code §151.129** [the Act, §19A], and which will fairly determine and reflect the annual groundwater and surface water percentage of the alternative water supply;

(3)-(6) (No change.)

*§293.364. Analysis and Report.* The executive director shall prepare and issue not later than the 15th day after the last day of the permit year an annual certified report (written analysis) based on the investigation and monitoring, which will state the annual average percentages of surface water and groundwater provided to the purchaser by the seller of the alternative water supply for that permit year. The executive director's annual certified report shall be determinative and controlling for purposes of determining the percentages of surface water and groundwater in the alternative water supply pursuant to **Water Code §151.129** [the Act, §19A].

*§293.365. Appeal of Final Decision of Board.*

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

(c) The executive director may request additional information from the appellant, the board, or both concerning the final decision of the board. A request for commission review is administratively complete when all of the information requested, including the information requested in subsection (b) of this section, has been submitted. A complete application shall be delivered to the **chief clerk** [office of hearings examiners] for the setting of a hearing on the appeal.

(d) The review on appeal by the commission under this section is governed by the substantial evidence rule as defined in the Administrative Procedure [and Texas Register] Act, **Government Code §2001.174** [Texas Civil Statutes, Article 6252-13a, §19(e)]. The final decision of the commission may adopt, modify or reject the findings and conclusions of the board. If the commission rejects the findings and conclusions of the board, it shall adopt its own findings of fact and conclusions of law. The commission shall issue a final ruling on the appeal no later than 60 days from the date the hearing on the appeal is closed.

(e) The hearing on the appeal shall be conducted, to the extent applicable given the limited scope of review under the substantial evidence rule, in accordance with the procedural rules of the commission [Chapters 261, 263, 265, 267, 269, and 273 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearings Before an Examiner; and Procedures After Final Decision)]; provided, however, that such hearing shall not be conducted as a contested case, and the foregoing procedural rules shall apply only to the extent that they do not exceed the scope of the commission's review under the substantial evidence rule. Nothing herein shall be interpreted to give the person a right to a trial de novo or to introduce evidence other than the record of the proceedings before the Board.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604134 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 6, 1996  
For further information, please call: (512) 239-4640

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND  
CONSERVATION**

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

**Chapter 51. Executive**

The Texas Parks and Wildlife Department proposes repeal §§51.1-51.9 and new §§51.1-51.4, concerning procedures for adoption of rules.

Procedures for adoption of rules are codified in Government Code, Chapter 2001, Subchapter B. State agencies are directed to prescribe the form and procedures for a petition for rulemaking under provisions of §2001.021, however the procedures for rulemaking are not specified.

New §51.1 establishes definitions needed for clarification of following sections. Proposed new §51.2 establishes procedures and requirements for submission of rulemaking petitions. New §51.3 requires that petitions for rulemaking be considered within 60 days after submission and sets requirements for disposition of rulemaking requests. Proposed new §51.4 limits subsequent petitions for rulemaking to those which are deemed to be materially different from previously submitted petitions.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of the proposed repeals of rules.

Dr. Harvey also has determined that for each of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of a single policy regarding procedures for rulemaking and submissions of rulemaking petitions. There will be no effect on small businesses and no anticipated economic cost to persons required to comply with the rules as proposed.

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

Comments on the proposed repeals may be submitted to Dr. Bill Harvey, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112, ext. 4642.

**Procedures for the Adoption of Rules**

◆ ◆ ◆  
• **31 TAC §§51.1-51.9**

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

The repeals are proposed under Government Code, Chapter 2001, Subchapter B.

The proposed repeals affect Government Code, §§2.001.021-2001.052.

*§51.1. Definitions.*

*§51.2. Adoption, Amendment, or Repeal of Rules.*

*§51.3. Public Comments.*

*§51.4. Emergency Rules.*

*§51.5. Submission of Petition.*

*§51.6. Content of Petition.*

*§51.7. Commission Advised.*

*§51.8. Consideration and Disposition.*

*§51.9. Subsequent Petitions.*

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 25, 1996.

TRD-9604144 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆  
• **31 TAC §§51.1-51.4**

The new sections are proposed under Government Code, Chapter 2001, Subchapter B.

The proposed new rules affect Government Code, §§2.001.021-2001.052.

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

Commission—The Texas Parks and Wildlife Commission.  
Department—The Texas Parks and Wildlife Department.  
Director—The executive director of the department.

*§51.2. Petitions for Rulemaking.*

(a) Any person may submit a petition to the department requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in written form by the director.

(b) Each petition will:

(1) clearly state the complete text of the proposed rule or amendment, or describe the rule to be repealed together with the text to be repealed;

(2) explain the reason or justification for the adoption, amendment or repeal of the rule; and

(3) be signed by at least one individual together with a mailing address and telephone number for the petitioner.

(c) The department may request any additional information deemed necessary to adequately consider the proposal submitted.

*§51.3. Consideration and Disposition.*

(a) A committee of the commission will consider requests within 60 days after the submission of a complete petition, except as provided by §51.4 of this title (relating to subsequent Petitions) and instruct the director to initiate rulemaking proceedings or place the petition on the agenda of the commission with a recommendation that it be denied. In the event a petition is denied, the director will notify the petitioner of the denial, stating the reasons in writing.

(b) Where a complete petition requests a new rule or changes to a rule, the subject of which is subject to The Uniform Wildlife Regulatory Act (Chapter 61, Texas Parks and Wildlife Code), the commission may defer the initiation of rulemaking proceedings until the next regulatory and hearing cycle begins.

*§§51.4. Subsequent Petitions.* The commission will consider a later petition having the same subject matter as the initial petition only if the executive director determines that the petitioner has demonstrated convincing evidence of new information of a material nature or that conditions have changed.

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 25, 1996.

TRD-9604145 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Procedures for Public Hearings Before the Commission

### • 31 TAC §§51.71-51.79

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

The Texas Parks and Wildlife Department proposes repeal §§51.71-51.79, concerning procedures for public hearings before the Commission.

Parks and Wildlife Code, §11.0151 directs the Commission to develop and implement policies that will provide the public with a reasonable opportunity to speak. The current regulations concerning public hearings were enacted prior to the May 1985 adoption of a Commission policy regarding public hearings. This policy adoption renders §§51.71-51.79 redundant.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local governments as a result of the proposed repeals of rules.

Dr. Harvey also has determined that for each of the first five years the repeals are in effect the public benefit anticipated as a result of a single policy regarding Parks and Wildlife Department procedures for rulemaking and submissions of rulemaking petitions. There will be no effect on small businesses and no anticipated economic cost to persons required to comply with the rules as proposed.

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

Comments on the proposed repeals may be submitted to Dr. Bill Harvey, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112, ext. 4642.

The repeals are proposed under Parks and Wildlife Code, §11.0151 which gives the commission authority to adopt policies relating to public hearings.

The proposed repeals affect Parks and Wildlife Code, §11.0151.

*§51.71. Chairman.*

*§51.72. Executive Director.*

*§51.73. Court Reporter.*

*§51.74. Agenda.*

*§51.75. Registration Form.*

*§51.76. Disclosure Statement.*

*§51.77. Public Appearances.*

*§51.78. Order of Hearings.*

*§51.79. Smoking in Commission Meetings.*

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 25, 1996.

TRD-9604146 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Chapter 53. Finance

### Selling Price of Departmental Information

#### • 31 TAC §53.35

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

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

Ms. Burgdorf also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be an increase in revenue to assist the department in the attainment of its mission. There will be no anticipated economic affect on local governments.

There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rule as proposed will be the variable cost(s) of authorized personal customer information.

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

Comments on the proposed rule may be submitted to Judy Doran, CFO Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4329 or 1-800-792-1112, ext. 4329.

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

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

*§53.35. Release and Sale of Customer Information.*

(a) The department may release customer information to accomplish its underlying mission and goals. It is the policy of the commission that certain personal information about the department's customers shall not be released, including, but not limited to, customers' social security, drivers' license, bank account, credit card, or charge card numbers, except where release of such information is dictated by statute or valid court order. The department may release a customer's telephone number only when the customer gives the department prior written consent.

(b) The department may rent or sell mailing lists consisting of names and addresses of persons who purchase customer products, licenses or services. It is the commission's policy to refuse rental or sale of mailing lists to any potential user at any time if the use proposed for the list(s) is for mailing(s):

- (1) whose purpose is deemed by the department to be contrary to the goals and missions of the department; or
- (2) for political candidates, parties, or causes; or
- (3) which contain elements that are dishonest, salacious or otherwise deleterious and which are not in the best interest of the State of Texas.

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

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

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

(f) Consistent with these rules, the executive director or his designee shall establish a procedure to withhold customer information.

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 25, 1996.

TRD-9604147 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Chapter 55. Law Enforcement

The Texas Parks and Wildlife Department proposes repeal of §§55.61-55.74, concerning deputy game warden commissions and new §§55.61-55.64, concerning deputy and special game warden commissions.

The repeal and new sections consolidate two existing auxiliary game warden programs. The new rules set forth the regulations for the qualifications of deputy game wardens, and the conduct and duties of deputy game wardens and special game wardens.

New §55.61 provides definitions necessary for clarity in regulations concerning duties and other requirements of service as a deputy or special game warden. New §55.62 outlines the duties, tenure and service requirements for deputy game wardens, while new §55.63 outlines similar requirements for special game wardens. Proposed new §55.64 references statutory requirements for special and deputy game wardens.

Boyd Kennedy, staff attorney, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state and local governments as a result of enforcing or administering the repealed and amended rules.

Mr. Kennedy also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of administering the rules as proposed will be the enhanced protection of wildlife in the state.

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

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

Comments on the proposed rule may be submitted to Assistant Commander, Carlos Vaca, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624 or 1-800-792-1112, extension 4624.

## Subchapter C. Deputy Game Warden Commission

### • 31 TAC §§55.61-55.74

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

The repeals are proposed under Parks and Wildlife Code, §11.020, which gives the commission authority to adopt rules relating to the qualifications of deputy game wardens, and the conduct and duties of deputy game wardens and special game wardens.

The proposed repeals affect Parks and Wildlife Code, §11.020.

*§55.61. Authorization.*

*§55.62. Selection Procedures.*

*§55.63. Training.*

*§55.64. Background Investigation.*

*§55.65. Oath and Bond.*

*§55.66. Personal Liability Insurance.*

*§55.67. Automobile Liability Insurance.*

*§55.68. Number of Deputy Game Wardens.*

*§55.69. Duties.*

*§55.70. Tenure.*

*§55.71. Identification.*

*§55.72. Uniform.*

*§55.73. Evidence.*

*§55.74. Weapons.*

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 25, 1996.

TRD-9604148 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆

## Subchapter C. Deputy and Special Game Warden Commission

### • 31 TAC §§55.61-55.64

The new sections are proposed under Parks and Wildlife Code, §§11.020-11.021, which give the commission authority to adopt rules relating to the qualifications of deputy game wardens, and the conduct and duties of deputy game wardens and special game wardens.

The proposed new rules affect Parks and Wildlife Code, §11.020-11.021.

*§55.61. Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, except where the context clearly indicates otherwise.

Active status—The period of time when a special game warden is compensated by the Department.

Department—The Texas Parks and Wildlife Department.

Director—The executive director of the Department or his/her designee.

Inactive status—The period of time when a special game warden is not compensated by the Department.

*§55.62. Deputy game wardens.* The following provisions are applicable to deputy game wardens, in addition to the provisions of Parks and Wildlife Code, § 11.020.

(1) Tenure: A deputy game warden commission will expire on August 31 of the odd-numbered year which occurs next after commissioning. The commission may be renewed or not renewed at the will of the Director.

(2) Insurance: A deputy game warden shall obtain personal liability insurance in the amount of \$100,000, which shall also protect the Department, its officers, agents, and employees from damages resulting from the law enforcement activities of the deputy game warden.

(3) Activities: A deputy game warden is authorized to work as a deputy to a regular game warden and to perform such game and fish duties as may be assigned by the regular game warden, in geographical areas designated by the Department. However, a deputy game warden may accompany a regular game warden in any area of the state. A deputy game warden is prohibited from enforcing the Water Safety Act, and from operating on the coastal waters, bays, and estuaries of this state.

(4) Evidence: A deputy game warden will turn over to the regular game warden all evidence in a case in order that the complaint may be handled by the regular game warden from that point forward.

(5) Weapons: A deputy game warden may carry weapons as authorized by the Penal Code.

(6) A deputy game warden shall comply with all components of the Law Enforcement Division operating procedures which are applicable to the activities of deputy game wardens.

*§55.63. Special game wardens.* The following provisions are applicable to special game wardens, in addition to the provisions of Parks and Wildlife Code, § 11.0201.

(1) Operating procedures: Special game wardens shall comply with all components of the Law Enforcement Division operating procedures and the Department personnel manual.

(2) Enforcement activities: While on inactive status, special game wardens may enforce flagrant violations of the laws specified by Parks and Wildlife Code, §11.0201(d), when the offense occurs in the presence of the special game warden and the violator may leave the scene or evidence may be lost or destroyed. A special game warden on active status may investigate and enforce any law authorized in Parks and Wildlife Code, §11.0201(d), to the same extent as a regular game warden.

(3) Uniform: While on active duty, a special game warden shall wear the uniform prescribed for a regular game warden.

(4) Compensation: Special game wardens on active status may be compensated not to exceed the salary of a game warden IV and may claim per diem or other expenses authorized by the Director. Special game wardens on inactive status may not be compensated by salary, but may claim per diem expenses for in-service training required by the Texas Commission on Law Enforcement Officer Standards and Education.

*§55.64. Additional requirements.* The Director is authorized to issue additional rules, in directive form, governing the deputy game warden and special game warden programs, including, but not limited to, rules necessary for selection procedures, number of appointees to training school, training requirements, uniform requirements, law enforcement activities, and revocation of a commission.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604149 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆

## Subchapter H. Special Game Warden Program

### • 31 TAC §§55.401, 55.403, 55.405, 55.407, 55.409, 55.411

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

The Texas Parks and Wildlife Department proposes repeal of §§55.401, 55.403, 55.405, 55.407, 55.409, and 55.411, concerning special game warden program.

The provisions of these sections will be merged into new proposed §§55.61-55.64 concerning Deputy and Special Game Warden Programs. This action renders current §§55.401-55.411 as unnecessary. The repeal as proposed makes no substantive changes in the special game warden program as it currently exists.

Boyd Kennedy, staff attorney, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repealed rules.

Mr. Kennedy also has determined that for each of the first five years the repeal rules as proposed is in effect the public benefit anticipated



as a result of administering the rules as proposed will be the continued protection of wildlife in the state and removal of redundancy in the Texas Administrative Code.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repealed rules as proposed.

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

Comments on the proposed rule may be submitted to Assistant Commander, Carlos Vaca, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624 or 1-800-792-1112, extension 4624.

The repeals are proposed under Parks and Wildlife Code, §11.021, which gives the commission authority to adopt rules relating to the conduct and duties of special game wardens.

The proposed repeals affect Parks and Wildlife Code, §11.021.

*§55.401. Applicability.*

*§55.403. Definitions.*

*§55.405. Application for Special Game Warden Commission.*

*§55.407. Duty Assignments.*

*§55.409. Compensation.*

*§55.411. Reports.*

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 25, 1996.

TRD-9604150 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Chapter 57. Fisheries

### Mussels and Clams

#### • 31 TAC §57.158

The Texas Parks and Wildlife Department proposes an amendment to §57.158, concerning Mussels and Clams. The amendment alters mussel and clam harvest restrictions on the Neches River. The amendment is necessary to fulfill the department's obligation to prevent depletion and waste of the state's wildlife resources, equitably distribute the available harvest and, in general, preserve and enhance existing populations while allowing for harvest according to prescribed wildlife and fisheries tenets.

Robin Riechers, staff economist, has determined that for each of the first five years that the rule as proposed is in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be the opportunity for recreational taking of resources consistent with populations of these species.

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

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

Comments on the proposed rule may be submitted to Ken Kurzawski, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4591 or 1-800-792-1112, extension 4591.

The amendment is proposed under Parks and Wildlife Code, Chapter 78, which provides the Commission with the authority to regulate the taking, possession, purchase, and sale of mussels and clams.

The amendment affects Parks and Wildlife Code, Chapter 78.006.

*§57.158. Mussels and Clams.*

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

(d) Seasons, Times and Places.

(1) (No change.)

(2) All public waters of the state are open to mussel and clam harvest except that mussels and clams may not be taken from the following rivers or creeks and their tributaries:

(A)-(G) (No change.)

(H) Neches River from **F.M. Road R255** [the Dam at Lake B.A. Steinhagen] downstream to its confluence with Pine Island Bayou in Orange County.

(I)-(U) (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 25, 1996.

TRD-9604143 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Private Water Management

### • 31 TAC §§57.181-57.184

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

The Texas Parks and Wildlife Department proposes repeal §§57.181-57.184, concerning private water management. Parks and Wildlife Code, §12.014 authorizes the Commission to set fees for stocking of fish in private waters. However, 31 TAC Chapter 52, (concerning Stocking Policy) sets guidelines for stocking of fish in private waters for investigation, propagation, distribution, scientific, educational or other valid management purposes. This policy negates the need for §§57.181-57.184.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or local governments as a result of the repealed rules.

Dr. Harvey also has determined that for each of the first five years the repeals as proposed is in effect the public benefit anticipated as a result of the repeals will be removal of redundant sections from the Texas Administrative Code.

There will be no anticipated effects on small businesses nor economic cost to persons required to comply with the rule as proposed.

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

Comments on the proposed repeals may be submitted to Dr. Bill Harvey, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112, extension 4642.

The repeals are proposed under Parks and Wildlife Code, §12.014 which gives the commission authority to set fees for stocking of fish in private waters.

The proposed repeals affect Parks and Wildlife Code, §12.014.

*§57.181. Introduction.*

*§57.182. Office Contact.*

*§57.183. On-Site Inspection.*

*§57.184. Survey.*

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 25, 1996.

TRD-9604154 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Chapter 59. Parks

### Sea Rim State Park Hunting, Fishing, and Trapping Proclamation

#### • 31 TAC §§59.201-59.215

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

The Texas Parks and Wildlife Department proposes repeal of §§59.201-59.215, concerning the Sea Rim State Park Hunting, Fishing and Trapping Proclamation. The provisions of these sections have been incorporated into 31 TAC Chapter 65, Subchapter H, concerning the Public Hunting Lands Hunting and Fishing Proclamation. This action renders §§59.201-59.215 redundant.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal of rules as proposed is in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be consistency in regulations concerning hunting and fishing activities on public lands under the control of the department. Further, redundant sections of the Texas Administrative Code will be removed.

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

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

Comments on the proposed repeal of rules may be submitted to Herb Kothmann, Wildlife Division, Texas Parks and Wildlife Department,

4200 Smith School Road, Austin, Texas 78744; (512) 389-4770 or 1-800-792-1112, extension 4770.

The repeals are proposed under Parks and Wildlife Code, Chapter 12, Subchapter D; Chapter 62, Subchapter D; and Chapter 81, Subchapter E, which provide the Parks and Wildlife Commission's authority to regulate the activities on lands under the control of the Department.

The proposed repeals affect Parks and Wildlife Code, §§12.301, 62.063, 62.0631, and 81.401-81.405.

*§59.201. Application.*

*§59.202. Authority.*

*§59.203. Finding of Fact.*

*§59.204. Consent.*

*§59.205. Definitions.*

*§59.206. Means and Methods: Migratory Birds.*

*§59.207. Means and Methods: Fur-bearing Animals.*

*§59.208. Hunting From Vehicle.*

*§59.209. Hunting Permits.*

*§59.210. Checking Game.*

*§59.211. Open Seasons and Bag Limits: Migratory Birds.*

*§59.212. Open Seasons and Bag Limits: Fur-bearing Animals.*

*§59.213. Fish: Means and Methods; Open Seasons; Bag and Size Limits.*

*§59.214. General.*

*§59.215. Effective Date.*

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 25, 1996.

TRD-9604153 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Chapter 65. Wildlife

### Subchapter A. Statewide Hunting and Fishing Proclamation

The Texas Parks and Wildlife Department proposes the repeal of §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36, 65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.71, 65.72, 65.78, 65.82, 65.90 and 65.91; and new §§65.1, 65.3, 65.5, 65.9-65.11, 65.13, 65.15, 65.19, 65.21, 65.24-65.29,

65.31-65.33, 65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66, 65.71, 65.72, 65.78, 65.82, and 65.91, concerning Statewide Hunting and Fishing Proclamation.

The repeals and new sections are necessary to implement the statutory duty of the department to regulate the commercial and recreational harvest of the wildlife resources of this state.

The repeals and new sections will function to eliminate duplication and unnecessary regulations, restructure and reorganize regulatory provisions in the interest of promoting user-friendliness, and implement regulatory changes which advance the Commission policy of increasing recreational opportunity within the tenets of sound biological management practices.

New §65.1, concerning Application, specifies the scope of the subchapter; new §65.3, concerning Definitions, qualifies the words and terms used in the subchapter; new §65.5, concerning Importation of a Wildlife Resource, sets the requirements under which wildlife resources taken out-of-state may be brought into Texas; new §65.9, concerning Open Seasons: General Rules, specifies regulations pertaining generally to hunting seasons; new §65.10, concerning Possession of Wildlife Resources, sets the requirements for lawful possession of wildlife resources; new §65.11, concerning Means and Methods, establishes the subchapter as the authority for lawful devices and activities with respect to hunting and fishing; new §65.13, concerning Firearms, outlines restrictions related to the use of firearms for hunting; new §65.15, concerning Archery, outlines restrictions and requirements related to the use of archery equipment for taking wildlife resources; new §65.19, concerning Hunting Deer with Dogs, regulates the use of dogs in conjunction with deer-hunting activities; new §65.21, concerning Falconry, provides for the hunting of wildlife resources by means of raptors; new §65.24, concerning Permits, sets the stipulations and requirements for persons receiving permits issued under the authority of the subchapter; new §65.25, concerning Wildlife Management Plan, specifies what must be contained in a wildlife management plan in order for it to be approved by the department; new §65.26, concerning Managed Lands Deer Permits, creates a program to encourage sound resource management and allow landowners greater management flexibility; new §65.27, concerning Antlerless and Spike-Buck Deer Control Permits, provides a mechanism to control overpopulation of deer; new §65.28, concerning Landowner Assisted Management Plan, creates a program that allows landowners to manage antlerless deer more effectively; new §65.29 and §65.31, concerning Pronghorn Antelope Permits and Antlerless Mule Deer Permits, provide for department issuance of permits for the hunting of those species; new §65.32, concerning Mandatory Check Stations, provides authority for the department to operate check stations for the collection of biological data; new §65.33, concerning Elk Permits, provides for department issuance of permits for the hunting of elk; new §65.38, concerning Game Animals: Open Seasons and Bag Limits, sets provisions generally applicable to the hunting of game animals; new §§65.40, 65.42, 65.44, 65.46, 65.48, 65.50, and 65.52 provide specific seasons, bag limits, and special regulations for the hunting of pronghorn antelope, white-tailed deer, mule deer, javelina, squirrel, desert bighorn sheep, elk, and aoudad sheep; new §65.54, concerning Game Birds: Open Seasons and Bag Limits, sets provisions generally applicable to the hunting of game birds; new §§65.56, 65.58, 65.60, 65.62, 65.64, and 65.66 provide specific seasons, bag limits, and special regulations for the hunting of Prairie Chicken, Partridge, Pheasant, Quail, Turkey, and Chachalaca; new §65.71, concerning Reservoir Boundaries, establishes specifically delineated areas for the purpose of imposing bag, possession, and length limits for fish; new §65.72, concerning Fish, sets the lawful means and methods, daily bag, possession, and length limits, and special regulations regarding the harvest of fish; new §65.78, concerning Crabs and Ghost Shrimp, imposes the requirements for taking and possessing those species; new §65.82, concerning Other Aquatic Life, prohibits the take of certain species of aquatic life; and new §65.91, concerning Penalty for Violation, prescribes the penalty for acts in violation of the subchapter.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a

result of enforcing the rules as proposed will be a reduction in the complexity and volume of regulations, a better organized regulatory scheme, and the enhanced protection of the wildlife resources of the state.

There will be no effect on small businesses. There is no anticipated additional economic cost to persons required to comply with the rules as proposed.

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

Comments on the proposed rules may be submitted to Robert Macdonald, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

## General Provisions

- **31 TAC §§65.1, 65.3, 65.5, 65.9, 65.11, 65.13, 65.15, 65.17, 65.19, 65.21, 65.23, 65.25-65.29, 65.31-65.34, 65.36, 65.37**

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

The repeals are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The repeals affect Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

*§65.1. Application.*

*§65.3. Definitions.*

*§65.5. Importation of a Wildlife Resource.*

*§65.9. Open Seasons: General Rules*

*§65.11. Means and Methods.*

*§65.13. Firearms.*

*§65.15. Archery.*

*§65.17. Hunting from Vehicle.*

*§65.19. Hunting Deer with Dogs.*

*§65.21. Falconry.*

*§65.23. Calling Devices.*

*§65.25. Nuisance Squirrels.*

*§65.26. Antlerless and Spike-Buck Deer Harvest Systems.*

*§65.27. Permits.*

*§65.28. Managed Lands Buck Permits.*

§65.29. Pronghorn Antelope Permits.

§65.31. Antlerless Mule Deer Permits.

§65.32. Mandatory Deer Check Stations.

§65.33. Elk Permits.

§65.34. Migratory Game Birds.

§65.36. Fur-bearing Animals.

§65.37. Alligators.

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 25, 1996.

TRD-9604243 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆  
• **31 TAC §§65.1, 65.3, 65.5, 65.9-65.11, 65.13, 65.15, 65.19, 65.21, 65.24-65.29, 65.31-65.33**

The new sections are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The new sections affect Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

§65.1. Application.

(a) This subchapter applies to all of the wildlife resources (except migratory game birds) of Texas.

(b) This chapter also applies to aquatic life caught in the Exclusive Economic Zone (EEZ) and landed in this state.

§65.3. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

Agent—A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term 'landowner' also includes the landowner's agent.

Annual bag limit—The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

Antlerless deer—A deer having no hardened antler protruding through the skin.

Artificial lure—Any lure (including flies) with hook or hooks attached that is man-made in imitation of or as a substitute for natural bait.

Bait—Something used to lure any wildlife resource.

Baited area—Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over any area where hunters are hunting wildlife resources.

Bearded hen—A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

Buck deer—A deer having a hardened antler protruding through the skin.

Cast net—A net which can be hand-thrown over an area.

Coastal waters boundary—All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of F.M. Road 2004 in Lake Jackson, thence northeastward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The public waters north of the dam on Lake Anahuac in Chambers County; north and west of the junction of the north and south forks of the Guadalupe River in Calhoun and Refugio counties; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; the Galveston County Reservoir on State Highway 146 in Galveston County; Lakeview City Park Lake in Corpus Christi; Lake Burke-Crenshaw in Pasadena; Galveston County Reservoir in Galveston County; Galveston State Park ponds #1-7 in Galveston County; Lake Nassau in Harris County; Fort Brown Resaca in Cameron County; Resaca de la Guerra in Cameron County; Resaca de la Palma in Cameron County; Resaca de los Cuates in Cameron County; Resaca de los Fresnos in Cameron County; Resaca Rancho Viejo in Cameron County; and Town Resaca in Cameron County are not considered coastal waters for purposes of this subchapter.

Community fishing lake—All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

Crab line—A baited line with no hook attached.

Daily bag limit—The quantity of a species of a wildlife resource that may be taken in one day .

Day—A 24-hour period of time that begins at midnight and ends at midnight.

Dip net—A mesh bag suspended from a frame attached to a handle.

Final destination for all wildlife resources—The permanent residence of the person possessing or receiving the wildlife resource, or a part of the wildlife resource, or a commercial processing plant after the carcass of the wildlife resource has been finally processed.

Fish—

(A) Game fish—Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish—All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

Fishing—Taking or attempting to take aquatic animal life by any means.

Fish length—That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

Fish species names—The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada."

Fully automatic firearm—Any firearm that is capable of firing more than one cartridge in succession by a single pull or function of the trigger.

Gaff—Any hand-held pole with a hook attached directly to the pole.

Gear tag—A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible and contain the name and address of the person using the device and the date the device was set out.

Gig—Any hand-held shaft with single or multiple points, barbed or barbless.

Jug line—A fishing line with five or less hooks tied to a free-floating device.

Lawful archery equipment—longbow, recurved bow, compound bow, and crossbow.

Muzzleloader—Any firearm that is loaded only through the muzzle using black powder or other propellant and separate projectile(s) and is ignited by a flint or percussion mechanism.

Natural bait—A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

License year—The period of time for which a hunting license is valid, whether or not the taking of wildlife is permitted in one or more periods during this time.

Pole and line—A line with hook, attached to a pole. This gear includes rod and reel.

Possession limit—The maximum number of a wildlife resource that may be possessed at one time.

Purse seine (net)—A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

Sail line—A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

Sand pump—A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (*Callinectes islagrande*, formerly *Callianassa islagrande*) from their burrows.

Seine—A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

Silencer or sound-suppressing device—Any device that reduces the normal noise level created when the firearm is discharged or fired.

Spear—Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

Spear gun—Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

Spike-buck deer—A buck deer with no antler having a fork or branching point.

Throwline—A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

Trap—A rigid device of various designs and dimensions used to entrap aquatic life.

Trawl—A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

Trotline—A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

Umbrella net—A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

Upper-limb handicap—a permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

Wildlife resources—All game animals, game birds (except migratory birds), marine animals, fish, and other aquatic life.

Wounded deer—A deer leaving a blood trail.

#### *§65.5. Importation of a Wildlife Resource.*

(a) No person may import into this state or possess a wildlife resource taken outside this state, unless the person possessing the wildlife resource produces upon demand by a game warden a valid hunting license, stamp, tag, permit, or document for the state or country in which the wildlife resource was legally taken.

(b) A person possessing a wildlife resource under this section must produce upon demand by a game warden a valid driver's license or personal identification certificate.

#### *§65.9. Open Seasons: General Rules.*

(a) There is no open season on game animals or game birds on public roads and highways, the right-of-way of public roads and highways; or in any state-owned riverbed in Dimmit, Uvalde, and Zavala counties.

(b) Seasons for game animals and game birds are closed during the hours between 1/2-hour after sunset and 1/2-hour before sunrise.

(c) No antlerless deer permit will be required to possess an antlerless deer taken during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

(d) Every game bird or game animal wounded by hunting and reduced to possession by the hunter must be killed immediately and become a part of the daily bag limit.

(e) The hunting of roosting turkey is unlawful.

#### *§65.10. Possession of Wildlife Resources.*

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit (except migratory birds), the possession limit shall not apply after the wildlife resource has reached its final destination.

(b) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches its final destination and is fully processed.

(1) The wildlife resources listed in this subsection may not be lawfully possessed without proof of sex, as follows:

(A) turkey taken in other than an either-sex county: the beard must remain attached to the bird;

(B) deer:

(i) buck: the unskinned head, with antlers still attached;

(ii) antlerless: the unskinned head;

(C) antelope: the unskinned head; and

(D) pheasant: one foot or the entire plumage attached to the carcass.

(2) In lieu of proof of sex, the person who killed the wildlife resource may obtain a receipt from a taxidermist or a signed statement from the landowner containing the following information:

(A) the name of person who killed the wildlife resource;

(B) the date the wildlife resource was killed;

(C) one of the following, as applicable:

(i) whether the deer was antlered or antlerless;

(ii) the sex of the antelope;

(iii) the sex of the turkey and whether a beard was attached; or

(iv) the sex of the pheasant.

(c) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. The wildlife resource document shall accompany the wildlife resource until it reaches its final destination. The document must contain the following information:

(1) the name, signature, address, and hunting or fishing license number, as required, of the person who killed or caught the wildlife resource;

(2) the name of the person receiving the wildlife resource;

(3) a description of the wildlife resource (number and type of species or parts);

(4) the date the wildlife resource was killed or caught; and

(5) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county). It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possess a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

*§65.11. Means and Methods.* It is unlawful to hunt or fish for any of the wildlife resources of this state, except by the means and methods authorized by this chapter.

*§65.13. Firearms.*

(a) It is lawful to hunt game animals and game birds with any legal firearm, including muzzleloading weapons, except as

specifically restricted in this chapter.

(b) It is unlawful to hunt game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(c) Special muzzleloader-only antlerless deer seasons are restricted to muzzleloading firearms only.

*§65.15. Archery.*

(a) It is lawful to hunt any game bird or game animal by means of lawful archery equipment during the open seasons specified for those species, except during a special muzzleloader-only antlerless deer season.

(b) Crossbows are lawful only during the general open seasons and as provided in subsection (f) of this section.

(c) Arrows that are treated with poisons, or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(d) While hunting turkey and all game animals other than squirrels by means of:

(1) longbow, compound bow, or recurved bow:

(A) the bow must have a minimum peak draw weight of 40 pounds; and

(B) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. The width must be demonstrable; and

(2) crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with subsections (c) and (d)(1)(B) of this section.

(e) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during the archery-only seasons.

(f) A person having an upper-limb handicap may use a crossbow to hunt deer and turkey during the archery-only open season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability.

*§65.19. Hunting Deer with Dogs.*

(a) It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer in all counties.

(b) It is lawful to use not more than two dogs in trailing a wounded deer in all counties, except in Angelina, Bowie, Camp, Fannin, Franklin, Hardin, Harris, Harrison, Houston, Hunt, Jasper, Jefferson, Lamar, Liberty, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Red River, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Walker, Washington, and Wood counties, where dogs shall not be used to trail wounded deer.

*§65.21. Falconry.*

(a) It is lawful to hunt any game bird or game animal by means of falconry, but the hunting is limited to persons holding valid permits issued by the department.

(b) It is lawful to take game birds other than migratory game birds during the period from September 1 to March 1 of each year. Other wildlife resources may be taken only during the regular open seasons as provided in this chapter.

(c) The daily bag limit for game birds is one, either sex, per raptor, and the possession limit is two, either sex, per raptor. The daily bag and possession limits for other wildlife resources is as provided under the regular seasons, bag, and possession limits for those resources.

(d) No person may possess a firearm or archery equipment or be accompanied by a person possessing a firearm or archery equipment while hunting by means of falconry.

*§65.24. Permits.*

(a) No person may hunt white-tailed deer, mule deer, antelope, or elk when permits are required unless that person possesses a valid permit issued by the department to the landowner.

(b) When permits are required to hunt or possess the wildlife resources listed in subsection (a) of this section, it is unlawful to:

- (1) use a permit more than once;
- (2) use a permit on a tract of land other than the tract for which the permit was issued;
- (3) falsify or fail to fully complete any information required by a permit application; or
- (4) possess the wildlife resource without attaching a valid, properly executed permit, which shall remain attached until the wildlife resource reaches its final destination.

(c) No permit is required to hunt antlerless white-tailed deer on the Aransas National Wildlife Refuge in Aransas County, Laguna Atascosa National Wildlife Refuge in Cameron County, or Hagerman National Wildlife Refuge in Grayson County.

(d) permits shall be issued only to the landowner.

*§65.25. Wildlife Management Plan (WMP).*

(a) A WMP is required for the issuance of Managed Lands Deer Permits and Antlerless/Spike-Buck Deer Control Permits. Each WMP shall apply to a specific tract of land, and shall include:

- (1) measurements of density, production, and sex composition of the deer population;
- (2) measurements of the number, sex, and when possible, the age of harvested deer;
- (3) an evaluation and appraisal of habitats determined to be of significance to deer;
- (4) descriptions of land management practices presently being employed.

(b) A WMP shall specify the number of antlered and/or antlerless deer to be harvested from a given tract of land, and the number of buck and/or antlerless MLD permits issued for that tract of land.

(c) A WMP will not be valid unless signed by a Wildlife Division biologist or technician, and shall be valid for one year following the date of such signature.

*§65.26. Managed Lands Deer (MLD) Permits.*

(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan) that specifies a harvest quota of buck and/or antlerless white-tailed or mule deer.

(b) An applicant may request the issuance of permits for antlerless-only, buck-only, or both-sex harvest quotas.

(c) The number of MLD permits distributed to a hunter shall be at the discretion of the landowner. A hunter may use any appropriate white-tailed deer tag on his or her hunting license, regardless of the bag limit in a county, provided the hunter also possesses an appropriate MLD permit for each deer taken.

(d) Except for deer taken under an Antlerless and Spike-Buck Control Permit, all deer harvested on a property where MLD permits have been issued must be tagged with the appropriate MLD permit as specified in the WMP.

(e) If a landowner in possession of MLD permits does not wish to abide by the harvest quota specified by the WMP, the landowner must return all MLD permits to the department by opening day of that year's special archery season.

(f) The department reserves the right to deny further issuance of MLD permits to a landowner who exceeds the harvest quota specified by the WMP or who does not otherwise abide by the WMP.

*§65.27. Antlerless and Spike-Buck Deer Control Permits (control permits).* Permits under this section shall be issued only to control overpopulation of white-tailed deer and may be issued only to a landowner who has a current WMP issued in accordance with §65.25 of this title (relating to Wildlife Management Plan) that specifies a harvest quota of more than 20 antlerless deer. The WMP for permits issued under this section must be signed by a Wildlife Division biologist classified CS VI or higher.

(1) Control permits shall be issued only after the landowner has provided the names, addresses and hunting license numbers of all persons who will be hunting under the authority of the permits. The maximum number of designated hunters allowed on one application for control permits shall not exceed one-tenth the number of deer recommended for harvest by the WMP. Additional designated hunters may not be added after permits have been issued.

(2) Control permits shall not be issued solely as a means to manipulate the sex ratio of a deer herd.

(3) For the purposes of this section, no WMP shall authorize the take of more than 300 deer per designated hunter.

(4) Control permits shall be valid only during general open deer seasons.

(5) Deer harvested under the authority of control permits shall not be part of a hunter's annual bag limit.

(6) A report form provided by the department shall be submitted to the department by the landowner not later than February 14 following the use of the permits. The report must specify the sex and date of kill for each deer harvested under a control permit.

*§65.28. Landowner Assisted Management Permit System (LAMPS)*

(a) A LAMPS recommendation specifies the number of antlerless deer to be harvested from a specific tract of land and is derived from acreage, habitat, population, and harvest data supplied by the landowner as specified by the department.

(b) The minimum contiguous acreage necessary for eligibility in the LAMPS program shall be determined on a county-by-county basis according to population trends and habitat.

(c) No LAMPS antlerless deer permit is required for a deer legally killed with lawful archery equipment (see §65.15 of this title (relating to Wildlife)) during the archery-only open season (§65.42(2) and (4) of this title (relating to Wildlife)).

§65.29. *Pronghorn Antelope Permits.* The department shall designate the number of pronghorn antelope to be harvested from a given tract of land, and shall issue permits to the landowner.

§65.31. *Antlerless Mule Deer Permits.*

(a) At the request of a landowner, the department may, based on evaluations of habitat and population, issue antlerless mule deer hunting permits for a specific tract of land.

(b) No antlerless mule deer hunting permit is required for mule deer killed during the archery-only open season, when bag limits are designated as either sex.

§65.32. *Mandatory Check Stations.*

(a) The department may establish check stations in any county of the state for the purpose of collecting biologic information on wildlife resources taken in that county.

(b) In any county in which mandatory check stations have been established, the entire wildlife resource, with head and hide/plumage attached, except that internal and sexual organs may be removed (field-dressed), must be presented:

(1) to a designated check station agent within 24 hours of take; and

(2) by the person or representative of the person who killed the wildlife resource.

(c) Check stations shall be under the direction of an agent designated by the department. Agents shall:

(1) register each wildlife resource presented at a check station;

(2) issue a special possession tag, provided by the department, for each wildlife resource presented at a check station;

(3) maintain records as prescribed in the record book supplied by the department; and

(4) allow inspection of all check station records upon request of the department during normal working hours.

(d) A person who fails or refuses to comply with this section commits an offense and is in violation of this subchapter.

§65.33. *Elk Permits.* At the request of a landowner, the department may, based on evaluations of habitat and population, issue elk hunting permits for any specific tract of land in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell counties.

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 25, 1996.

TRD-9604244 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Seasons and Bag Limits—Hunting Provisions

- **31 TAC §§65.38, 65.40, 65.42, 65.44, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, 65.66**

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

The repeals are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The repeals affect Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

§65.38. *Game Animals: Open Seasons and Bag Limits.*

§65.40. *Pronghorn Antelope.*

§65.42. *Deer: White-tailed and Mule Deer.*

§65.44. *Javelina: Open Seasons and Bag Limits.*

§65.46. *Squirrel: Open Seasons, Bag, and Possession Limits.*

§65.48. *Desert Bighorn Sheep: Open Seasons and Bag Limits.*

§65.50. *Elk: Open Seasons and Bag Limits.*

§65.52. *Aoudad Sheep: Open Seasons and Bag Limits.*

§65.54. *Game Birds: Open Seasons and Bag Limits.*

§65.56. *Prairie Chicken: Open Seasons, Bag, and Possession Limits.*

§65.58. *Partridge: Open Seasons and Bag Limits.*

§65.60. *Pheasant: Open Seasons, Bag, and Possession Limits.*

§65.62. *Quail: Open Seasons, Bag, and Possession Limits.*

§65.64. *Turkey.*

§65.66. *Chachalacas.*

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 25, 1996.

TRD-9604245 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



The new sections are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.



The new sections affect Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

*§65.38. Game Animals: Open Seasons and Bag Limits.* It is unlawful to hunt a game animal at any time other than during the open seasons provided in this chapter or to take more than the annual or daily bag limits, or to have in possession a game animal taken at any time other than during the open season. On the first day of any open season the possession limit is the same as the daily bag limit.

*§65.40. Pronghorn Antelope: Open seasons and bag limits.* In all counties there is a general open season for pronghorn antelope for nine consecutive days beginning the Saturday nearest October 1, and the annual bag limit is one pronghorn antelope, by permit only.

*§65.42. Deer: White-tailed and Mule Deer.*

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits), no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer: open seasons and annual bag limits shall be as follows.

(1) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal, Concho, Culberson, Gillespie, Glasscock, Hays, Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Llano, Mason, McCulloch, Medina (only north of U. S. Highway 90), Menard, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Sterling, Tom Green, Travis, Upton (only in that southeastern portion located south of U.S. Highway 67 and east of State Highway 349), and Uvalde (only north of U.S. Highway 90) counties, there is a general open season for white-tailed deer.

(A) Open season: First Saturday in November through the first Sunday in January.

(B) Annual bag limit: Four white-tailed deer, no more than two bucks.

(2) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Crockett, Dimmit, Duval, Edwards, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (only south of U. S. Highway 90), Nueces, Refugio, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde (only south of U. S. Highway 90), Val Verde, Webb, Willacy, Zapata and Zavala counties, there is a general open season for white-tailed deer.

(A) Open season: Second Saturday in November through the third Sunday in January.

(B) Annual bag limit: Five white-tailed deer, no more than three bucks.

(C) General Late Antlerless Deer Season. In the counties listed in this paragraph there is a general late antlerless-only white-tailed deer season.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Annual bag limit: Five antlerless white-tailed deer.

(3) No person may take or attempt to take more than one white-tailed buck deer per license year from counties, in the aggregate, listed within this paragraph, except on tracts of land for which MLD buck permits have been issued.

(A) In Bell, Bosque, Callahan, Comanche, Coryell, Eastland, Erath, Hamilton, Hood, Jack, Lampasas, McLennan, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Williamson, and Young counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(B) In Angelina, Brazoria, Chambers, Fort Bend, Goliad (south of U.S. Highway 59), Hardin, Harris, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, Tyler, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first 23 days of the season, antlerless deer may be taken without antlerless deer permits unless LAMPS or MLD permits have been issued for the tract of land. If LAMPS or MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest (except the Moore Plantation and Bannister WMA), Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Karnes, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, Wilbarger, and Wilson counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first six days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first six days, antlerless deer may be taken only by MLD antlerless permits.

(D) In Archer, Baylor, Clay, Cooke, Denton, Hill, Johnson, Montague, Tarrant, and Wise counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(E) In Anderson, Bowie, Brazos, Burleson, Camp, Cass, Cherokee, Colorado, Delta, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Houston, Jackson (north of U.S. Highway 59), Lamar, Lavaca, Leon, Limestone, Madison, Marion, Morris, Navarro, Red River, Robertson, Rusk, San Jacinto, Smith, Titus, Trinity, Upshur, Van Zandt, Walker, Wharton (north of U. S. Highway 59), and Wood counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits .

(iv) Special Requirement: In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 31, and on the west by State Highway 274, hunting of deer is restricted to shotguns with buckshot or lawful archery equipment. Other game animals or game birds may be taken only with shotgun or lawful archery equipment.

(F) In Hartley, Moore, Oldham and Potter counties, there is a general open season for white-tailed deer.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(G) In Nacogdoches, Panola, Sabine, San Augustine and Shelby counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) During the first two days of the season, antlerless deer may be taken without antlerless deer permits unless LAMPS or MLD permits have been issued for the tract of land. If LAMPS or MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first two days, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forest (except Moore Plantation and Bannister WMA), Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(H) In Austin, Bastrop, Caldwell, Crane, De Witt, Ector, Ellis, Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Grayson, Guadalupe, Hunt, Kaufman, Lee, Loving, Midland, Milam, Rains, Upton (all that portion located north of U.S. Highway 67; and in that area located south of U. S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, Washington, and Winkler counties, there is a general open season for white-tailed deer.

(i) Open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Three deer, no more than one buck and no more than two antlerless deer.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(4) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Sherman, Terry, and Yoakum counties, there is no general open season for white-tailed deer.

(5) On all tracts of land for which MLD permits have been issued for the harvest of white-tailed deer, the landowner may allow the hunting of white-tailed deer for 88 consecutive days beginning the first Saturday in November.

(c) White-tailed deer: archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which white-tailed deer may be taken with lawful archery equipment other than crossbows. The archery-only open season begins on the Saturday closest to September 30 and runs for 30 consecutive days.

(d) White-tailed deer: Muzzleloader-only open seasons and bag limits shall be as follows.

(1) In Bandera, Brown, Coke, Coleman, Concho, Gillespie, Irion, Kendall, Kerr, Kimble, Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch, Mills, Real, Runnels, San Saba, Sterling, Tom Green, and Uvalde (north of U.S. Highway 90) counties, there is an open season during which only antlerless white-tailed deer may be taken only with a muzzleloader.

(2) Open Season: From the first Saturday following the closing of the general open season for nine consecutive days.

(3) Annual bag limit: Four antlerless white-tailed deer.

(e) Mule deer: open season and annual bag limit shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season for mule deer.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Annual bag limit: Two mule deer, no more than one buck.

(C) Antlerless mule deer may be taken only by Antlerless Mule Deer Permits or MLD antlerless permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season for mule deer.

(A) Open season: Last Saturday in November for 16 consecutive days.

(B) Annual bag limit: Two mule deer, no more than one buck.

(C) Antlerless mule deer may be taken only by Antlerless Mule Deer Permits or MLD antlerless permits.

(3) In all other counties, there is no general open season for mule deer.

(4) On all tracts of land in counties for which there is a general open season for white-tailed deer and for which MLD permits have been issued for the harvest of mule deer, the landowner may allow the hunting of mule deer during the general open season for white-tailed deer for that county.

(f) Mule deer: archery-only open seasons, bag and possession limits shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season during which mule deer may be taken only with lawful archery equipment other than crossbows.

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Annual bag limit: One buck mule deer.

(2) In Brewster, Pecos, and Terrell counties, there is an open season during which mule deer may be taken only with lawful archery equipment other than crossbows.

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Annual bag limit: Two mule deer, no more than one buck.

(3) In all other counties, there is no archery-only open season for mule deer.

(4) The archery-only season bag limit is not in addition to any other lawful open season bag limits for mule deer.

(g) White-tailed Deer: national wildlife refuges. Hunting season dates may further be restricted in compliance with regulations promulgated by the U. S. Fish and Wildlife Service and published in the Federal Register.

(h) Special Youth-Only Season.

(1) There shall be a special youth-only hunting season for white-tailed deer in all counties where there is a general open season for white-tailed deer.

(A) Open season: the weekend immediately preceding the first Saturday in November.

(B) Annual bag limit: as specified for individual counties in subsection (b) of this section.

(2) Only licensed hunters 16 years of age or younger may hunt white-tailed deer during the season established by this subsection.

(3) Provisions for the take of antlerless deer in any given county shall be as provided for the first day of the general open season in that county.

(4) Any legal means or method except crossbow may be used during the youth-only season.

*\$65.44. Javelina: Open seasons and annual bag limits.*

(a) In Andrews, Baylor, Blanco, Caldwell, Calhoun, Coke, Comal, Concho, Crane, DeWitt, Ector, Foard, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Howard, Irion, Knox, Llano, Loving, McCulloch, Martin, Mason, Midland, Mitchell, Nolan, Reagan, Refugio, Runnels, San Saba, Sterling, Taylor, Tom Green, Upton, Victoria, Ward, Wichita, Wilbarger, and Winkler counties, there is a general open season on javelina.

(1) Open season: October 1 through the last Sunday in February.

(2) annual bag limit: two javelina.

(3) Possession limit: two javelina.

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is no closed season on javelina and the annual bag limit is two javelina.

(c) In all other counties, there is no open season for javelina.

*\$65.46. Squirrel: Open Seasons, Bag, and Possession Limits.*

(a) In Austin, Brazos, Burleson, Collin, Colorado, Dallas, Ellis, Falls, Fayette, Grayson, Grimes, Jackson, Kaufman, Lavaca, Lee, Madison, Matagorda, Milam, Rockwall, Waller, Washington, and Wharton counties, there is no closed season for squirrel.

(1) Daily bag limit: 10 squirrels.

(2) Possession limit: 20 squirrels.

(b) In Anderson, Angelina, Bowie, Brazoria, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Fort Bend, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood counties, there is a general open season for squirrel.

(1) Open season: May 1 - May 31 and October 1 - January 15.

(2) Daily bag limit: 10 squirrels.

(3) Possession limit: 20 squirrels.

(c) In Andrews, Bailey, Borden, Brewster, Briscoe, Carson, Castro, Cochran, Crane, Culberson, Dallam, Dawson, Deaf Smith, Ector, El Paso, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Hockley, Howard, Hudspeth, Hutchinson, Jeff Davis, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Moore, Oldham, Parmer, Potter, Presidio, Reagan, Reeves, Sherman, Swisher, Terry, Upton, Ward, Winkler, and Yoakum counties, there is no open season on squirrel.

(d) In all other counties, there is no closed season, and no bag limit on squirrels.

*\$65.48. Desert Bighorn Sheep: Open seasons and annual bag limits.*

(a) In Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties, there is a general open season for desert bighorn sheep.

- (b) Open Season: From September 1 through August 31.
- (c) Annual bag limit: One desert bighorn sheep ram as specified on the permit, by permit only.
- (d) Possession Limit: One desert bighorn sheep ram.

*§65.50. Elk: Open seasons and annual bag limits.* Elk may be taken in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell counties, by permit only. There is no closed season on elk and the annual bag limit is one.

*§65.52. Aoudad Sheep: Open seasons and annual bag limits.* In Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties, there is a general open season for aoudad sheep.

- (1) Open season: First Saturday in November through the third Sunday in January.
- (2) Annual bag limit: One aoudad sheep.
- (3) Possession limit: One aoudad sheep.

*§65.54. Game Birds: Open Seasons and Bag Limits.* It is unlawful to hunt a game bird at any time other than during the open seasons provided in this chapter, or to take more than the daily bag limits, or to have in possession a game bird taken at any time other than during the open seasons. On the first day of any open season the possession limit is the same as the daily bag limit.

*§65.56. Prairie Chicken: Open Seasons, Bag, and Possession Limits.*

- (a) In Cochran, Hemphill, Hockley, Lipscomb, Ochiltree, Terry, Wheeler, and Yoakum counties, there is an open season on prairie chicken.
  - (1) Open season: Third Saturday in October for two consecutive days.
  - (2) Daily bag limit: Two prairie chickens.
  - (3) Possession limit: Four prairie chickens.
- (b) In all other counties, there is no open season on prairie chicken.
- (c) It is unlawful to hunt prairie chicken with any weapon other than a shotgun.

*§65.58. Partridge: Open Seasons and Bag Limits.* The season on partridge is closed in all counties.

*§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.*

- (a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.
  - (1) Open season: Second Saturday of December for 16 consecutive days.
  - (2) Daily Bag limit: Three cock pheasants.
  - (3) Possession limit: Six cock pheasants.
- (b) In Brazoria, Chambers, Fort Bend, Jefferson, Liberty, Matagorda, and Wharton counties, there is an open season for pheasants.

- (1) Open season: Saturday nearest November 1 through the last Sunday in February.
- (2) Daily bag limit: Three cock pheasants.
- (3) Possession limit: Six cock pheasants.
- (c) In all other counties, there is no open season on pheasants.
- (d) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.

*§65.62. Quail: Open Seasons, Bag, and Possession Limits.*

- (a) In all counties there is an open season for quail beginning the Saturday nearest November 1 through the last Sunday in February.
- (b) Daily bag limit: 15 quail.
- (c) Possession limit: 45 quail.
- (d) There is no open season on Mearns' quail (commonly called fool's quail).

*§65.64. Turkey.* No person may take more than four turkeys per license year.

- (1) Seasons and annual bag limits:
  - (A) In Archer, Bandera, Bell, Bexar, Blanco, Bosque, Burnet, Clay, Comal, Comanche, Cooke, Coryell, Erath, Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, Karnes, Kendall, Kerr, Lampasas, Llano, McLennan, Medina (only north of U.S. Highway 90), Montague, Palo Pinto, Parker, Real, Somervell, Stephens, Travis, Wichita, Williamson, Wilson, Wise, and Young counties, there is a general open season for turkey.
    - (i) General open season: First Saturday in November through the first Sunday in January.
    - (ii) Annual bag limit: Four turkeys, gobblers or bearded hens.
  - (B) In Aransas, Atascosa, Bee, Calhoun, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, LaSalle, Live Oak, Maverick, McMullen, Medina (only south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Webb, and Zavala counties, there is a general open season for turkey.
    - (i) General open season: Second Saturday in November through the third Sunday in January.
    - (ii) Annual bag limit: Four turkeys, gobblers or bearded hens.
  - (C) In Crockett, Edwards, Kinney, Schleicher, Sutton, Terrell, Uvalde (only south of U.S. Highway 90) and Val Verde counties, there is a general open season for turkey.
    - (i) General open season: Second Saturday in November through the third Sunday in January.
    - (ii) Annual bag limit: Four turkeys, either sex.
  - (D) In Brooks, Kenedy and Kleberg counties, there is a general open season for turkeys.
    - (i) General open season: Second Saturday in November through the last Sunday in February.
    - (ii) Annual bag limit: Four turkeys, either sex.

(D) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Knox, Lipscomb, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltrie, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Scurry, Shackelford, Sterling, Stonewall, Swisher, Taylor, Throckmorton, Tom Green, Upton, Uvalde (only in that portion north of U.S. Highway 90), Ward, Wheeler, and Wilbarger counties, there is a general open season for turkey.

(i) General open season: First Saturday in November through the first Sunday in January.

(ii) Annual bag limit: Four turkeys, either sex.

(E) In Willacy County, there is a general open season for turkeys.

(i) General open season: Second Saturday in November through the third Sunday in January.

(ii) Annual bag limit: Four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only with lawful archery equipment other than crossbows.

(A) Archery-only open season: from the Saturday closest to September 30 for 30 consecutive days, during which turkeys may be taken only with lawful archery equipment.

(B) Annual bag limit: In any given county, as provided by this section for the fall general season for that county.

(3) Spring turkey season and bag limits:

(A) In Archer, Armstrong, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Grayson, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltrie, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Tarrant, Terrell, Throckmorton, Tom Green, Travis, Upton, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring season for turkeys.

(i) Spring season: Second Saturday in April for 37 consecutive days.

(ii) Annual bag limit: Four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, DeWitt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring season for turkeys.

(i) Spring season: Second Saturday in April for 37 consecutive days.

(ii) Annual bag limit: One turkey, gobblers only.

(C) In Aransas, Atascosa, Bee, Bexar, Brooks, Calhoun, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Webb, Willacy, Wilson, and Zavala counties, there is a spring season for turkeys.

(i) Spring season: First Saturday in April for 37 consecutive days.

(ii) Annual bag limit: Four turkeys, gobblers only.

(D) In Bowie, Cass, Cherokee, Harrison, Jasper, Marion, Nacogdoches, Newton, Red River, and Trinity counties there is a spring season for turkeys.

(i) Spring season: The Monday nearest April 20 for 14 consecutive days.

(ii) Annual bag limit: One turkey, gobbler only.

(iii) No person shall take or attempt to take turkeys by the aid of baiting, or on or over a baited area, in the counties listed in this subparagraph.

(iv) In the counties listed in this subparagraph it is unlawful to hunt turkey with any firearm other than a shotgun.

(v) All turkeys harvested during the spring gobbler season in the counties listed in this subparagraph must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(4) In all counties not listed in paragraphs (1)-(3) of this section, the season is closed for hunting turkey.

(5) Special Youth-Only Season.

(A) There shall be a special youth-only hunting season for Rio Grande turkey in all counties where there is a general open season for Rio Grande turkey.

(i) Open season: the weekend immediately preceding the first Saturday in November.

(ii) Annual bag limit: as specified for individual counties in paragraph (1) of this section.

(B) Only licensed hunters 16 years of age or younger may hunt Rio Grande turkey during the season established by this subsection.

(C) Any legal means or method except crossbow may be used during the youth-only season.

*§65.66. Chachalacas.* In Cameron, Hidalgo, Starr, and Willacy counties, there is an open season for chachalacas.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Daily bag Limit: Five chachalacas.

(3) Possession limit: Ten chachalacas.

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 25, 1996.

TRD-9604246 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆  
**Seasons and Bag Limits—Fishing Provisions**

• **31 TAC §§65.71, 65.72, 65.78, 65.82, 65.90, 65.91**

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

The repeals are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The repeals affect Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

*§65.71. Community Fishing Lakes and Reservoir Boundaries.*

*§65.72. Fish.*

*§65.78. Crabs.*

*§65.82. Other Aquatic Life.*

*§65.90. Effective Date.*

*§65.91. Penalty for Violation.*

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 25, 1996.

TRD-9604241 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆  
• **31 TAC §§65.71, 65.72, 65.78, 65.82, 65.91**

The new sections are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The new sections affect Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983).

*§65.71. Reservoir Boundaries.* Reservoir boundaries for daily bag, possession, and length limits.

(1) Buchanan Reservoir in Burnet, Lampasas, Llano and San Saba counties comprises all impounded waters of the Colorado River from Lake Buchanan dam upstream to the U.S. Highway 190 bridge.

(2) Caddo Lake in Marion and Harrison counties comprises all impounded waters of Big Cypress Bayou from the Texas-Louisiana border upstream to the State Highway 43 bridge.

(3) Canyon Reservoir in Comal County comprises all impounded waters of the Guadalupe River from the Canyon dam upstream to the U.S. Highway 281 bridge.

(4) Cooper Lake in Delta and Hopkins counties comprises all waters within the Corps of Engineers lands on Cooper Lake upstream from State Highway 19/154 and downstream from F.M. Road 71.

(5) Gibbons Creek Reservoir in Grimes County comprises all impounded waters within the Texas Municipal Power Agency property boundaries.

(6) Inks Lake in Burnet and Llano counties comprises all impounded waters of the Colorado River from the Roy Inks dam (Inks Lake dam) upstream to the Lake Buchanan dam.

(7) Lake Conroe in Montgomery and Walker counties comprises all impounded waters of the West Fork of the San Jacinto River from the Lake Conroe dam upstream to F.M. Road 1790 bridge.

(8) Lake Georgetown in Williamson County comprises all impounded waters of the North Fork of the San Gabriel River from the Lake Georgetown dam upstream to U.S. Highway 183 bridge.

(9) Lake Limestone in Leon, Limestone, and Robertson counties comprises all impounded waters of the Navasota River from the Lake Limestone dam upstream to the Fort Parker State Park Lake dam.

(10) Lake Livingston in Leon, Houston, Madison, Polk, San Jacinto, Trinity, and Walker counties comprises all impounded waters of the Trinity River from the Lake Livingston dam upstream to the lock and dam near State Highway 7.

(11) Lake Lyndon B. Johnson in Burnet and Llano counties comprises all impounded waters of the Colorado River from the Alvin Wirtz Dam (Lake Lyndon B. Johnson dam) upstream to the Roy Inks dam (Inks Lake dam) including the Llano River upstream to the State Highway 16 bridge and Sandy Creek upstream to the State Highway 71 bridge.

(12) Lake Marble Falls in Burnet County comprises all impounded waters of the Colorado River from the Max Starcke dam (Lake Marble Falls dam) upstream to the Alvin Wirtz dam (Lake Lyndon B. Johnson dam).

(13) Lake O'the Pines in Camp, Marion, Morris, and Upshur counties comprises all impounded waters of Big Cypress Creek from Ferrell's Bridge dam (the Lake O'the Pines dam) upstream to U.S. Highway 259 bridge.

(14) Lake Palestine in Anderson, Cherokee, Henderson, Smith, and Van Zandt counties comprises all impounded waters of the Neches River from the Blackburn Crossing dam (the Lake Palestine dam) upstream to F.M. Road 279 bridge including Kickapoo and Flat Creeks in Henderson County.

(15) Lake Somerville in Burleson, Lee, Milam, Roberston, and Washington counties comprises all impounded waters of Yegua, East Yegua, and Middle Yegua Creeks upstream from the Lake Somerville dam.

(16) Lake Travis in Burnet and Travis counties comprises all impounded waters of the Colorado River from the Mansfield dam (Lake Travis dam) upstream to the Max Starcke dam (Lake Marble Falls dam) including the Pedernales River upstream to the Hammetts Crossing-Hamilton Pool Road bridge.

(17) Purtis Creek State Park Lake in Henderson and Van Zandt counties comprises all impounded waters within the Purtis Creek State Park boundaries.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter.

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters.

(C) to use game fish or any part thereof as bait.

(D) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat.

(E) to use of airboats or jet-driven devices to pursue and harass or harry fish.

(F) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(4) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum or tarpon) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) take a finfish required to be tagged and fail to immediately attach and secure a properly executed tag to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder; or

(vi) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same Exempt Red Drum Tag holder, or Duplicate Red Drum Tag holder.

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales

ticket showing the name and address of the seller, the number of fish by species, the date of sale, and other information required on a sales or ticket invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) Statewide daily bag and length limits shall be as follows:

Figure 1: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(ii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) In community fishing lakes and in sections of rivers lying totally within the boundaries of state parks, game and non-game fish may be taken by pole and line only.

(3) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(4) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net. It is unlawful to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; and

(ii) to take non-game fish.

(C) Gaff. It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods. Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the

permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment.

(G) Minnow trap. For use in fresh water only

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) Perch traps may not exceed 18 cubic feet.

(iii) Perch traps must be marked with floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached.

(I) Pole and line. Game and non-game fish may be taken by pole and line.

(i) It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) In the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge on F.M. Road 306, artificial lures only may be used. Artificial lures cannot contain or have attached either whole or portions, living or dead, fish, crayfish, insects (including grubs, larvae, adults), worms, salmon eggs, cheese, or corn.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden from the waters of the Gulf of Mexico from the coastline to the gulfward limit of the territorial seas from the third Monday in April through the first day in November each year.

(ii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(iii) Purse seines may not be used in any bay, river, pass, or tributary thereto, nor within one mile of any jetty or pass, nor within one-half mile offshore in the Gulf of Mexico.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated;

(II) with mesh exceeding 1/2-inch square; or

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Shrimp trawl. For use in salt water only. Non-game fish taken incidental to legal shrimping operations may be retained. The term "legal shrimping operations" is defined as the use of a legal trawl in places, at times, and in manners as authorized by the department. A person taking shrimp with a trawl may not retain a catch of finfish exceeding 50% of the total trawl catch by weight of shrimp on a shrimping vessel, except that up to 1,200 live non-game fish not regulated by bag or size limits may be retained for bait between June 15 and August 14 aboard a vessel licensed for commercial bait shrimp fishing. A person using an individual bait shrimp trawl for recreational purposes may retain non-game fish in any amount for bait, except those species regulated by bag or size limits.



(O) Spear. Only non-game fish may be taken with a spear.

(P) Spear gun. Only non-game fish may be taken with spear gun.

(Q) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bell Street Lake in Tom Green County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, and Gibbons Creek Reservoir in Grimes County.

(R) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Bell Street Lake in Tom Green County, and Boerne City Park Lake in Kendall County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) and retain or possess red drum, sharks or spotted seatrout caught on the trotline;

(-c-) not marked with yellow flagging attached to stakes or with a yellow floating buoy not less than six inches in height and six inches in width attached to end fixtures. All trotline floats must be yellow;

(-d-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-e-) baited with other than natural bait on trotlines, except sail lines;

(-f-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-g-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p. m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy;

(S) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

#### *§65.78. Crabs and Ghost Shrimp.*

(a) Bag, possession and size limits.

(1) It is unlawful while fishing on public waters to have in his possession crabs in excess of the daily bag limit as established for those waters.

(2) There are no bag, possession, or size limits on crabs except as provided in these rules.

(3) It is unlawful to:

(A) possess egg-bearing (sponge) crabs or stone crabs;

(B) possess blue crabs less than five inches in width, (measured across the widest point of the body from tip of spine to tip of spine) except that not more than 5.0%, by number, of

undersized crabs may be possessed if placed in a separate container at the time of taking;

(C) remove or possess on board a vessel on public waters the left claw from a stone crab (each retained claw must be at least 2-1/2 inches long as measured from the tip of the immovable claw to the first joint behind the claw) ;

(D) fail to return immediately a stone crab to the waters where caught;

(E) buy or sell a female crab that has its abdominal apron detached; or

(F) possess more than 20 ghost shrimp (*Callichirus islagrande*, formerly *Callinassa islagrande*) per person.

(b) Seasons. There are no closed seasons for the taking of crabs, except as listed within this section.

(c) Places. There are no places closed for the taking of crabs, except as listed within this section.

(d) Devices, means and methods.

(1) It is unlawful to take, attempt to take, or possess crabs caught by devices, means, or methods other than as authorized in this subchapter.

(2) Only the following means and methods may be used for taking crabs:

(A) Crab line.

(B) Crab trap. It is unlawful to:

(i) fish for commercial purposes with more than 200 crab traps at one time;

(ii) fish for non-commercial purposes with more than six crab traps at one time;

(iii) fish a crab trap in the fresh waters of this state;

(iv) fish a crab trap that exceeds 18 cubic feet in volume and is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the lower edge of the outside trap walls;

(v) fish a crab trap for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(vi) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(vii) fish a crab trap in public waters without a valid gear tag that has a date that is more than 30 days old attached to the buoy;

(viii) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet

of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(ix) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(x) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(xi) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(xii) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(C) Sand pump. It is unlawful for any person to use a sand pump:

(i) that is not manually operated; or

(ii) for commercial purposes.

(D) Other devices. Devices legally used for taking fresh or salt water fish or shrimp may be used to take crab if operated in places and at times authorized by a proclamation of the Parks and Wildlife Commission or the Parks and Wildlife Code.

#### *§65.82. Other Aquatic Life.*

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) There is no open season on porpoises, dolphins (mammals), and whales.

(c) Any other aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by proclamations of the Parks and Wildlife Commission and the Parks and Wildlife Code.

*§65.91. Penalty for Violation.* The penalties for violation of this subchapter are prescribed by the Parks and Wildlife Code.

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 25, 1996.

TRD-9604242

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

Proposed date of adoption: May 9, 1996

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



## Subchapter F. Permits to Control Protected Species

### • 31 TAC §§65.151-65.157

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

The Texas Parks and Wildlife Department proposes repeal of §§65.151-65.157, concerning permits to control protected species. The

provisions for issuing permits for controlling protected species are codified in Parks and Wildlife Code, Chapter 65, Subchapter H, §§43.151-43.157. This codification renders these TAC sections redundant.

Boyd Kennedy, staff attorney, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or local government as a result of the repealed rules.

Mr. Kennedy also has determined that for each of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of administering the repeals as proposed will be the enhanced protection of wildlife in the state.

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

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

Comments on the proposed repeals may be submitted to Dr. Bill Harvey, Regulatory Coordinator, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112, extension 4642.

The repeals are proposed under authority of Parks and Wildlife Code, §§43.151-43.157.

The proposed repeals affect Parks and Wildlife Code, §§43.151-43.157.

*§65.151. Damage to Crops and Domestic Animals.*

*§65.152. Inspection By Department.*

*§65.153. Application for Permit.*

*§65.154. Permit.*

*§65.155. Deer.*

*§65.156. Cancellation of Permit.*

*§65.157. Violations and Penalty.*

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 25, 1996.

TRD-9604152 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Subchapter H. Public Lands Proclamation

The Texas Parks and Wildlife Department proposes the repeal of §§65.190-65.198 and new §§65.190-65.208, concerning Public Lands Proclamation. The repeals and new sections will function to eliminate duplication and unnecessary regulations, restructure and reorganize regulatory provisions in the interest of promoting user-friendliness, and implement regulatory changes which advance the Commission policy of increasing recreational opportunity within the tenets of sound biological management practices.

The repeals and new sections are necessary to fulfill the department's statutory obligation to prevent depletion and waste of the state's wildlife resources, equitably distribute the available harvest on public lands,

and, in general, preserve and enhance existing populations while allowing for harvest according to prescribed wildlife and fisheries tenets.

New §65.190, concerning Application, specifies the scope of the subchapter; new §65.191, concerning Definitions, qualifies the words and terms used in the subchapter; new §65.192, concerning Powers of the Executive Director, outlines the duties and responsibilities of the executive director with respect to public hunting lands; new §65.193, concerning Access Permit and Fees, delineates permit and access requirements, and sets fees; §65.194, concerning Competitive Hunting Dog Event Permit and Fees, sets forth the requirements for the conduct of field trials on public hunting lands; new §65.195, concerning Permit Revocation, provides for permit revocation in cases of violations; new §65.196, concerning Refund of Permit Fees, establishes the policy for refunding permit fees; new §65.197, concerning Reinstatement of Preference Points, provides a policy in the event that a hunt is not conducted or an error is made in a hunt assignment; new §65.198, concerning Entry, Registration, and Checkout, sets forth the access and registration requirements for persons on public hunting lands; new §65.199, concerning General Rules of Conduct, delineates unlawful or prohibited acts; new §65.200, concerning Construction of Blinds, sets forth the department policy on construction and maintenance of hunting blinds; new §65.201, concerning Motor Vehicles, sets forth the department policy on the use of motor vehicles on public hunting lands; new §65.202, concerning Minors Hunting on Public Lands, establishes requirements for the supervision of minors; new §65.203, concerning Hunter Safety, provides requirements for maintaining public safety; new §65.204, concerning Hunting and Fishing-General Provisions, establishes certain departmental publications and various proclamations of the commission as the regulatory authority for public hunting activities; new §65.205, concerning Means and Methods-General Provisions, sets forth the requirements and restrictions with respect to devices and manners of hunting; new §65.206, concerning Taking of Wildlife Resources, specifies requirements for hunting, generally and for specific species, on public hunting lands; new §65.207, concerning Tagging, requires hunters to tag certain wildlife resources; and new §65.208, concerning Penalties, provides for penalties for violations of the subchapter.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be an estimated additional revenue to the department of approximately \$300,000. There will be no fiscal implications to local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the opportunity for recreational taking of resources consistent with populations of these species.

There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rules as proposed will vary according to the type and number of permits purchased.

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

Comments on the proposed rule may be submitted to H. G. Kothmann, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770 or 1-800-792-1112, ext. 4770.

### • 31 TAC §§65.190-65.198

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

The repeals are proposed under the Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the Department if the Commission deter-

mines that multiple use is the best utilization of the land's resources; and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

The repeals affect Parks and Wildlife Code, Chapter 81, Subchapter E; Chapter 12, Subchapter A; and Chapter 62, Subchapter D.

*§65.190. Application.*

*§65.191. Definitions.*

*§65.192. General Rules and Regulations*

*§65.193. Open Seasons, Bag and Possession Limits, and Means and Methods; General Rules.*

*§65.194. Permit Required and Fees.*

*§65.195. Permit Revocation.*

*§65.196. Refund of Permit Fees.*

*§65.197. Reinstatement of Preference Points.*

*§65.198. Penalties.*

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 26, 1996.

TRD-9604249 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Subchapter H. Public Lands Proclamation

### • 31 TAC §§65.190-65.208

The new sections are proposed under the Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the Department if the Commission determines that multiple use is the best utilization of the land's resources; and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

The new sections affect Parks and Wildlife Code, Chapter 81, Subchapter E; Chapter 12, Subchapter A; and Chapter 62, Subchapter D.

*§65.190. Application.*

(a) This subchapter applies to all activities subject to department regulation on lands designated by the department as public hunting lands, regardless of the presence or absence of boundary markers. Public hunting lands are acquired by lease or license, management agreements, trade, gift, and purchase. Records of such acquisition are on file at the Department's central repository.

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter.

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (Aquilla, Cooper, Cypress Creek, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters are exempt from requirements for an access permit.

(d) On state park lands designated as public hunting lands, access for fishing and non-consumptive use is governed by state park regulations.

(e) Public hunting lands are designated in the Map Booklet and the Application Booklet and include, but are not limited to, the following:

- (1) Alabama Creek WMA (Unit 904);
- (2) Alazan Bayou WMA (Unit 747);
- (3) Aquilla WMA (Unit 748);
- (4) Atkinson Island WMA;
- (5) Bannister WMA (Unit 903);
- (6) Big Lake Bottom WMA (Unit 733);
- (7) Black Gap WMA (Unit 701);
- (8) Blue Elbow Swamp WMA (Unit 712);
- (9) Caddo Lake State Park and WMA (Unit 730);
- (10) Caddo WMA (Unit 901);
- (11) Candy Abshier WMA;
- (12) Cedar Creek Islands WMA (includes Big Island, Bird Island, and Telfair Island Units);
- (13) Chaparral WMA (Unit 700);
- (14) Cleavenger Tract (Unit 617);
- (15) Cooper WMA (Unit 731);
- (16) Cypress Creek WMA (Unit 774);
- (17) Dam B WMA—includes Angelina-Neches Scientific Area (Unit 707);
- (18) Designated Units of the Las Palomas WMA;
- (19) Designated Units of Public Hunting Lands Under Short-Term Lease;
- (20) Designated Units of the Playa Lakes WMA;
- (21) Designated Units of the State Park System;
- (22) Elephant Mountain WMA (Unit 725);
- (23) Gene Howe WMA (Unit 755)—includes Pat Murphy Unit (Unit 706);
- (24) Granger WMA (Unit 709);
- (25) Guadalupe Delta WMA (Unit 729);
- (26) Gus Engeling WMA (Unit 754);
- (27) James Daughtrey WMA (Unit 713);
- (28) J. D. Murphree WMA (Unit 783);
- (29) Keechi Creek WMA (Unit 726);
- (30) Kerr WMA (Unit 756);
- (31) Lands Within a Desert Bighorn Sheep Cooperative Unit;

- (32) Lower Neches WMA (Unit 728);
- Peninsula Unit (33) Mad Island WMA (Unit 729)—includes Matagorda (Unit P150);
- (34) Matador WMA (Unit 702);
- (35) Matagorda Island State Park and WMA (Unit 722);
- (36) M. O. Neasloney WMA;
- (37) Moore Plantation WMA (Unit 902);
- (38) North Toledo Bend WMA (Unit 615);
- (39) Old Sabine Bottom WMA (Unit 732);
- (40) Old Tunnel WMA;
- (41) Pat Mayse WMA (Unit 705);
- Beach Unit (42) Peach Point WMA (Unit 721)—includes Bryan (Unit P075);
- (43) Ray Roberts WMA (Unit 501);
- (44) Richland Creek WMA (Unit 703);
- (45) Sam Houston National Forest WMA (Unit 905);
- (46) Sheldon State Park and WMA (Unit 716);
- (47) Sierra Diablo WMA (Unit 767);
- (48) Somerville WMA (Unit 711);
- (49) Tawakoni WMA (Unit 708);
- (50) Walter Buck WMA (Unit 757);
- (51) White Oak Creek WMA (Unit 727); and
- (52) Other numbered units of public hunting lands.

*§65.191. Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation) and Parks and Wildlife Code.

Adult—A person 17 years of age or older.

All terrain vehicle (ATV)—A motor vehicle which does not meet traffic code requirements for operation on a public roadway with respect to licensing, inspection and insurance requirements.

Annual Public Hunting (APH) Permit—A \$40 permit, valid from issuance date through the following August 31, which allows entry to designated public hunting lands at designated times and the taking of wildlife resources as designated.

Application fee—A non-refundable fee which may be required to accompany and validate an individual's application for a special permit.

Application Booklet—The current department publication entitled "Applications for Drawings on Public Hunting Lands" and departmental supplements.

Authorized supervising adult—parent, legal guardian, or individual at least 21 years of age who assumes liability responsibility for a minor.

Blind—Any structure assembled of man-made or natural materials for the purpose or having the effect of promoting concealment or increasing the field of vision of a person.

Buckshot—Lead pellets ranging in size from .24-inch to .36-inch in diameter normally loaded in a shotgun (includes, but is not limited to 0 and 00 buckshot).

Competitive hunting dog event (field trial)—A department-sanctioned contest in which the skills of hunting dogs are tested.

Concurrent hunt—A hunt that maintains the same permit requirements, hunt dates, means and methods, or shooting hours or combinations thereof for more than one species of animal, as designated and subject to any special provisions.

Consumptive user—A person who takes or attempts to take wildlife resources.

Designated campsite—A designated area where camping and camping activities are authorized.

Designated days—Specific days within an established season or period of time as designated by the executive director and identified in the Map Booklet and Application Booklet.

Designated road—A constructed roadway indicated as being open to the public by either signs posted to that effect or by current maps and leaflets distributed at the area. Roads closed to the public may additionally be identified by on-site signing, barricades at entrances, or informational literature made available to the public. Designated roads do not include county or state roads or highways.

Designated target practice area—An area designated by on-site signing or in the Map Booklet within which the discharge of firearms for target practice is authorized.

Designated units of the state park system—Specific units of the state park system approved by the commission for application of provisions of this subchapter and identified in the Map Booklet and Application Booklet.

Disabled person—A paraplegic or a person who has a physician's statement in their immediate possession certifying that they qualify for handicapped parking privileges (criteria for permanent ambulatory disability as defined in Texas Civil Statutes, Article 6675a-5e.1, referenced in "Application for Disabled Persons—Special Registration Insignia").

Exotic mammal—As defined by Agriculture Code, §161.001.

General Season—A specified time period, or designated days within a specified time period, during which more than one means or methods (as designated) may be used to take designated species.

Headwear—A garment or item of apparel worn on or about the head.

Immediate supervision—Control of a minor by an authorized supervising adult issuing verbal instructions in a normal voice level.

Lands within a desert bighorn sheep cooperative—An aggregation of lands for which the concerned landowners and the Texas Parks and Wildlife Department have agreed to coordinate efforts to restore, manage, and harvest desert bighorn sheep.

Limited Public Use (LPU) Permit—A \$10 permit, valid from issuance date through the following August 31, which allows access to designated public hunting lands at the same times when access is provided by an APH permit. An LPU permit does not authorize the taking of wildlife resources, except on U.S. Forest Service lands where restrictions are placed on the type of device for taking wildlife which may be possessed.

Limited use zone—An area designated in the Map Booklet and/or by boundary signs on the area, within which public use is prohibited or restricted to specified activities.

Loaded firearm—A firearm containing a live round of ammunition within the chamber and/or the magazine, or if muzzleloading, one which has a cap on the nipple or a priming charge in the pan.

Map booklet—The current department publication entitled "Public Hunting Lands Map Booklet" and departmental supplements.

Minor—An individual less than 17 years of age.

Non-consumptive activities—Activities which do not involve the take or attempted take of wildlife resources.

On-site registration—The requirement for public users to register at designated places upon entry to and exit from specified public hunting lands, but does not constitute a permit.

Permit—Documentation authorizing specified access and public use privileges on public hunting lands.

Predatory animals—Coyotes and bobcats.

Preference point system—A method of special permit distribution in which the probability of selection is progressively enhanced by prior unsuccessful applications within a given hunt category by individuals or groups.

Public hunting area—A portion of public hunting lands designated as being open to the activity of hunting, and may include all or only a portion of a certain unit of public hunting land.

Public hunting compartment—A defined portion of a public hunting area to which hunters are assigned and authorized to perform public hunting activity.

Public hunting lands—Lands identified in §65.190 of this title (relating to Application) and in the Map Booklet and Application Booklet on which provisions of this subchapter apply.

Regular Permit—A permit issued on a first-come-first-served basis, on-site, at the time of the hunt that allows the taking of designated species of wildlife on the issuing area.

Restricted area—All or portions of public hunting lands identified by boundary signs as being closed to public entry or use.

Sanctuary—All or a portion of public hunting lands identified by boundary signs as being closed to the hunting of specified wildlife resources.

Slug—A metallic object designed for being fired as a single projectile by discharge of a shotgun.

Special Permit—A permit, issued pursuant to a selection procedure, which allows the taking of designated species of wildlife.

Special package hunt—A public hunt conducted for promotional or fund raising purposes and offering the selected applicant(s) a high quality experience with enhanced provisions for food, lodging, transportation, and guide services.

Tagging fee—A fee which may be assessed in addition to the special permit fee for the harvest of alligators for commercial sale or prior to the attempted harvest of desert bighorn sheep or designated exotic mammals.

Texas Conservation Passport (gold or silver edition)—A permit which serves to provide access at designated times to designated portions of public hunting lands for non-consumptive use as authorized under the Texas Conservation Passport Program.

Wildlife management area (WMA)—A unit of public hunting lands which is intensively managed for the conservation, enhancement, and public use of wildlife resources and supporting habitats.

Wildlife resources—Game animals, game birds, furbearing animals, alligators, marine mammals, frogs, fish, crayfish, other aquatic life, exotic animals, predatory animals, rabbits and hares, and other wild fauna.

Wounded exotic mammal—An exotic mammal leaving a blood trail.

#### *§65.192. Powers of the Executive Director.*

(a) The executive director is authorized by the Parks and Wildlife Commission to execute lease and management agreements for public hunting lands.

(b) The executive director may designate lands acquired under short-term lease agreement or lands acquired following the adoption of this subchapter for application of regulations governing hunting, fishing, and other public use.

(c) The executive director may designate hunt areas, legal species, hunt dates, shooting hours, bag limits, means and methods, and permit requirements within the framework established by the commission to promote the proper management and public use of wildlife resources on public hunting lands.

(d) The executive director may designate specific hunts for participation only by persons who meet established criteria with respect to age or disability.

(e) The executive director may designate limited-use zones on public hunting lands, within which public use is prohibited, restricted, or limited to certain periods of time.

(f) The executive director may close public hunting lands to public use to protect sensitive sites, and may cancel hunts or close the seasons on certain areas to avoid depletion of wildlife resources.

(g) The executive director may permit recreational activities on public hunting lands, compatible with sound resource management practices and public health and safety.

(h) The executive director may waive application and permit fees for events having participation restricted to youth or disabled persons, or for activities conducted for purposes of research, education, or charity.

(i) The executive director may establish regulations for camping on public hunting lands, consistent with the type of public use activity authorized and the environmental protection of the area.

(j) It is a violation to conduct business concessions on public hunting lands unless specifically authorized in writing by the executive director. Business concessions include but are not limited to activities such as selling, buying, leasing, or peddling goods, merchandise or services to the public.

#### *§65.193. Access Permit Required and Fees.*

(a) It is an offense for a person without a valid access permit to enter public hunting lands, except:

(1) on areas or for activities where no permit is required;

(2) persons who are authorized by, and acting in an official capacity for the department or the landowners of public hunting lands;

(3) persons participating in educational programs, management demonstrations, or other scheduled activities sponsored or sanctioned by the department with written approval;

(4) persons owning or leasing land within the boundaries of public hunting lands, while traveling directly to or from their property;

(5) for a non-hunting or non-fishing adult who is assisting a permitted disabled person;

(6) for a non-hunting adult who is supervising a permitted minor in a youth-only hunt; or

(7) for minors under the supervision of an authorized supervising adult possessing an APH permit or a LPU permit.

(b) A Texas Conservation Passport (Gold or Silver) is required of each person 17 years of age or older to obtain access to designated public hunting lands at times when non-consumptive use is authorized under the Texas Conservation Passport Program. The Texas Conservation Passport is not required to hunt or fish, nor does it authorize the taking of wildlife resources or provide access to public hunting lands at times when an APH permit, LPU permit, regular permit, or special permit is required.

(c) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) Except as provided in paragraphs (2)-(4) of this subsection, it is an offense for a person 17 years of age or older to enter public hunting lands or take or attempt to take wildlife resources on public hunting lands at times when an APH permit is required without possessing an APH permit or to fail to display the APH permit, upon request, to a department employee or other official authorized to enforce regulations on public hunting lands. The fee for the APH permit is \$40.

(2) A person possessing a LPU permit may enter public hunting lands at times that access is allowed under the APH permit, but is not authorized to hunt or fish, except as provided in paragraph (3) of this subsection. The fee for the LPU permit is \$10.

(3) The APH permit is required of each person 17 years of age or older who enters the Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest WMAs and possesses a centerfire or muzzleloading rifle or handgun, a shotgun with shot larger than #4 lead, or lawful archery equipment with broadhead hunting point; however, a person 17 years of age or older may enter these units with other legal devices for hunting as defined

in this subchapter and take specified legal wildlife resources provided the person possesses a LPU permit.

(4) The permits required under paragraphs (1)-(3) of this subsection are not required for:

(A) persons who enter on United States Forest Service lands designated as a public hunting area (Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903 for any purpose other than hunting; or

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Cypress Creek, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting.

(5) The permit required by paragraphs (1)-(3) of this subsection is not valid unless the signature of the holder appears on the permit.

(6) A person, by signature of the permit and by payment of a permit fee required by paragraphs (1)-(3) of this subsection:

(A) waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee); and

(B) agrees, as a condition of holding the permit, to abide by all regulations contained in this subchapter and all provisions of the Map and/or Applications Booklets.

(d) Regular Permit. A regular permit is issued on a first come-first served basis at the hunt area on the day of the scheduled hunt with the department reserving the right to limit the number of regular permits to be issued.

(e) Special Permit. A special permit is issued to an applicant selected in a drawing.

(f) Permits for hunting wildlife resources on public hunting lands shall be issued by the department to applicants by means of a fair method of distribution subject to limitations on the maximum number of permits to be issued.

(g) The department may implement a system of issuing special permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(h) Application fees.

(1) The department may charge a non-refundable fee which may be required to accompany and validate an individual's application in a drawing for a special hunting permit.

(2) The application fee for each person 17 years of age or older listed on an application for a special hunting permit may not exceed \$25 per legal species and, unless otherwise established by the commission, shall be in the amount of:

(A) \$2.00 in the general drawings; and

(B) \$10 for special package hunts.

(3) The application fee for a special hunting permit is waived for a person under 17 years of age; however, the minor must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, except as provided in paragraph (4) of this subsection.

(4) The application fee for a special permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a minor in a youth-only drawn hunt category.

(5) The application fee for a special permit is waived for on-site applications made under standby procedures at the time of a hunt.

(6) In the event an application for a special permit is determined to be invalid, then:

(A) the application card and related application fees will be returned to the applicant for correction and resubmission, provided the error is detected prior to the time that the application information is processed; or

(B) the error will result in disqualification of the applicant(s), and the application fees will be retained by the department.

(i) Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(j) The fees for special and regular permits are:

(1) deer, exotic mammal, pronghorn antelope, javelina, turkey, coyote, alligator-\$50;

(2) deer, exotic mammal, alligator-extended period-\$100;

(3) squirrel, game birds (other than turkey), rabbits and hares-\$10;

(4) special package hunts, desert bighorn sheep-no charge;

(k) Only one special or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(l) Any applicable special or regular permit fees will be waived for minors under the supervision of a duly permitted authorized supervising adult.

(m) Any applicable regular permit fees will be waived for persons possessing an APH permit.

(n) An access permit is issued to a specific individual, and neither the permit nor the rights granted thereunder are transferrable to another person.

(o) It is an offense if a person fails to obey the conditions of a permit issued under this subchapter.

*§65.194. Competitive Hunting Dog Event (Field Trial) Permits and Fees.* The department may authorize field trials on public hunting lands. All activities conducted pursuant to this section shall be subject to the provisions of this subchapter, except as specifically provided in this section.

(1) No person shall conduct or participate in a field trial on public hunting lands unless the event has been sanctioned by the department through the issuance of a Field Trial Permit in accordance with this section.

(2) An application for a Field Trial Permit shall be submitted at least 90 days in advance of the proposed event to the Wildlife Division regional director in whose region the proposed event would take place. The application shall include, at a minimum:

(A) the name, address, and telephone number of the sponsoring person(s) or organization(s);

(B) the unit(s), compartment(s), and approximate acreage of public hunting lands that the proposed event would involve;

(C) the date(s) of the proposed event, including preparatory activity and cleanup operations;

(D) the exact nature of the event, including any construction, facilities emplacement, or other site alterations;

(E) the number of participating dogs, dog handlers, and officials, respectively, and the estimated number of spectators;

(F) the fee for the field trial permit as assessed according to the number of participating dog handlers and officials as follows:

- (i) 10 or less participants—\$100 per day;
- (ii) 11-25 participants—\$200 per day;
- (iii) 26-50 participants—\$300 per day;
- (iv) 51-75 participants—\$400 per day; and
- (v) 76 or more participants—\$500 per day.

(G) proof of liability insurance for the event in the amount of at least \$250,000, which shall include coverage of personal injury and property damage; and

(H) a performance bond in the amount of \$5,000 to assure restoration of the involved public hunting lands to pre-field trial conditions.

(3) Approval or denial of the permit application shall be at the sole discretion of the regional director and shall be based on the anticipated impact the proposed event would have:

(A) on the natural resources of public hunting lands; and

(B) on other events or activities authorized or conducted by the department.

(4) The regional director shall, within 30 days of receipt of such application, notify the applicant of approval or denial of the application. If the application is approved, the field trial permit shall be issued in the form of a letter to the applicant. Any requirements or restrictions in addition to the provisions of this subchapter shall be specified in the permit.

(5) The field trial permit shall be present and available on-site during all field trial activities. The permittee shall, prior to commencing any competition, attach to the permit an accurate list containing the names and social security numbers of all dog handlers and officials who at any time participate in the event. The aggregate number of participants named on the list shall not exceed the number of participants authorized by the field trial permit. The list shall be sent to the regional director no later than ten days following the conclusion of the event.

(6) All persons named on the list as officials or dog handlers shall, during the event, be exempt from the access permit requirements of this subchapter. All other persons attending the event shall be subject to the provisions of this subchapter relative to requirement of an access permit.

(7) The permittee is responsible and liable for the actions of all field trial participants, spectators, and dogs during all activities conducted during this event.

(8) All construction, facilities emplacement, or other site alterations shall be performed and removed strictly in accordance with the conditions of the field trial permit. The permittee shall not be released from the obligations of this section and the performance bond shall not be returned to the permittee until the department is satisfied that the site has been restored to pre-trial conditions.

(9) During any field trial activity, it is an offense for any person attending the event or named on the list required by subsection (e) of this section to:

(A) violate any condition of the field trial permit; or

(B) take or attempt to take any animal or bird.

*§65.195. Permit Revocation.* Any person violating this subchapter is subject to having their permit revoked under the authority of Parks and Wildlife Code, Chapter 12, Subchapter F.

*§65.196. Refund of Permit Fees.* There is a standard no-refund policy concerning permit fees; however the department will consider, on a case-by-case basis, requests for refund of permit fees based on extenuating circumstances.

*§65.197. Reinstatement of Preference Points.* Accrued preference points will be reinstated in the concerned hunt category for a selected applicant only if:

(1) payment of hunt permit fees has been made, but the scheduled hunt is unable to be conducted in its entirety or is canceled at the discretion of the department;

(2) the selected applicant was assigned a hunt category, hunt area, or hunt period other than was indicated on the application.

*§65.198. Entry, Registration and Checkout.*

(a) It is an offense if a person:

(1) who does not possess a valid permit enters a public hunt area at a time when access is restricted only to persons possessing a valid permit;

(2) enters an area identified by boundary signs as a limited use zone, sanctuary, or restricted area and fails to obey the restrictions on public use posted at the area or as set forth in this subchapter; or

(3) on areas where on-site registration is required, fails to check in at a registration station and properly complete registration procedures before initiation of hunting, fishing, or non-consumptive use activities or fails to properly check out at the registration station before departing the area.

(b) Unless otherwise authorized in writing by the department or as provided in subsection (c) of this section, it is an offense if a person hunting under special or regular permit fails to:

(1) check in at a designated check station prior to initiation of hunting activities; and

(2) check out at a designated check station or otherwise fails to allow inspection of the bag before leaving the area.

(c) The requirements of subsection (b) of this section may be waived for specific hunts as designated in the Map Booklet and/or Application Booklet or by direction of the hunt supervisor. Participation in regular permit hunts for which the check station requirement has been waived will be solely by APH permit.

(d) Access for non-consumptive use and fishing may be temporarily restricted while hunts are being conducted by special or



regular permit or at times when ongoing research or management activities may be impacted.

*§65.199. General Rules of Conduct.* This section applies to all public hunting lands unless an exception for a specific area and time period is designated in the Map Booklet or the Application Booklet or by written permission of the department. It is unlawful for any person to:

(1) fail to obey regulations posted at the area or listed in the Map Booklet and Application Booklet, fail to comply with instructions on permits or area leaflets, or refuse to follow directives given by departmental personnel in the discharge of official duties;

(2) possess a firearm, archery equipment, or any other device for taking wildlife resources on public hunting lands, except for persons authorized by the department to hunt or conduct research on the area, commissioned law enforcement officers, and department employees in performance of their duties;

(3) camp or construct an open fire anywhere other than in a designated campsite. On the Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs, this restriction applies only during the period from the day prior to the opening of the archery deer season through the day following the close of the general deer season;

(4) cause, create, or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10:00 p.m. and 6:00 a.m.;

(5) to establish a camp and leave it unattended for a period of longer than 24 hours;

(6) disturb or remove of plants, rocks, artifacts, or other objects from public hunting lands, except as authorized by the department;

(7) write on, scratch, or otherwise deface natural features, signs, buildings, or other structures;

(8) fail to deposit refuse in designated containers or fail to remove it from the area;

(9) consume or be under the influence of alcohol while engaged in hunting activities, or to publicly consume or display an alcoholic beverage while on public hunting lands;

(10) possess dogs in camp that are not confined or leashed;

(11) use or possess any type of riding stock or pack animal on public hunting lands at any time, except:

(A) as may be provided in the Map Booklet or Application Booklet;

(B) by written authorization of the department; or

(C) when authorized for specific areas and time periods scheduled under the Texas Conservation Passport Program; or

(12) use an airboat within the boundaries of public hunting lands, except as designated for specific areas and time periods in the Map Booklet and the Application Booklet or by written permission of the department.

*§65.200. Construction of Blinds.*

(a) The construction of permanent blinds is prohibited.

(b) The use of temporary blinds is permitted only if such structures are not:

(1) nailed to trees;

(2) emplaced longer than 72 hours (24 hours maximum on the Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs); or

(3) otherwise prohibited for the specific activity, area, or time period.

(c) It is an offense for a person to:

(1) fail to remove all introduced materials used in constructing a temporary blind at the conclusion of public use activity;

(2) place a blind within 50 yards of any designated road, designated campsite, or public hunting lands boundary; or

(3) attempt to establish preferential rights to use of a specific location through construction of a temporary blind. A temporary blind shall be equally available to all public users on a first-come-first-served basis.

*§65.201. Motor Vehicles.*

(a) It is an offense to not confine motor vehicle use to designated roads, except parking is permitted on the shoulder of or immediately adjacent to designated roads, and as provided for a disabled person or for a person directly assisting a disabled person.

(b) It is unlawful to hunt any wildlife resource from a motor vehicle, motor-driven land conveyance, or possess a loaded firearm in or on the vehicle, except as provided for a disabled person.

(c) A disabled person may possess a loaded firearm in or on a motor vehicle and may hunt from a motor vehicle except only paraplegics and single or double amputees of legs may hunt migratory birds from a motor vehicle, provided the motor vehicle is not in motion and is not located on a designated road, designated vehicle parking area, or designated campground.

(d) Except as authorized for specific areas and time periods in the Map Booklet and Application Booklet, or by written permission of the hunt supervisor or area manager, it is an offense for an individual other than a disabled person or a person directly assisting a disabled person to operate an all terrain vehicle (ATV) on public hunting lands.

*§65.202. Minors Hunting on Public Hunting Lands.* It is an offense for a minor to fail to be under the immediate supervision of a duly permitted and authorized supervising adult when hunting on public hunting lands. For a minor who has received hunter education certification, the requirement for immediate supervision is relaxed to the extent that the authorized supervising adult is required only to be present on the public hunting area. The authorized supervising adult is responsible for the actions and liability of the minor.

*§65.203. Hunter Safety.*

(a) It is an offense if a person is within a hunt area during daylight hours at a time when hunting with firearms is permitted and fails to visibly wear:

(1) a minimum of 400 square inches of daylight fluorescent orange material, of which 144 square inches must appear on both the chest and back; and

(2) orange headwear.

(b) A person is exempt from the requirements of subsection (a) of this section only if the person is:

(1) hunting turkey, migratory birds, alligators, or desert bighorn sheep;

(2) within the enclosed passenger compartment of a motor vehicle; or

(3) within a designated campground, designated vehicle parking area, designated boat launching facility, or departmental check station.

(c) It is an offense to possess a loaded firearm in or on a motor vehicle, except as provided in §65.201(c) of this title (relating to Motor Vehicles) for a disabled person.

(d) It is an offense to possess a loaded firearm within a designated campsite, vehicle parking area, boat launching facility, or departmental check station.

(e) It is an offense to discharge a firearm or archery equipment from, onto, along, or across a designated road or designated campsite.

(f) It is an offense to use or display a firearm or other device in an obviously unsafe or threatening manner.

#### §65.204. *Hunting and Fishing Regulations—General Provisions.*

The open seasons, shooting hours, means and methods, tag requirements, and bag and possession limits on public hunting lands for taking:

(1) game animals, game birds, fish, furbearers, and alligators, when designated as a legal species for a specific unit of public hunting lands, shall be as provided in Subchapters A, N, O, and P of this chapter (relating to Statewide Hunting and Fishing Proclamation; Statewide Furbearing Animal and Trapping Proclamation; Alligator Proclamation; Migratory Game Bird Proclamation), except as otherwise provided in this subchapter and designated in the Map Booklet and the Application Booklet; and

(2) exotic mammals, predators, and rabbits and hares, when designated as a legal species for a specific unit of public hunting lands, shall be as provided in this subchapter and designated in the Map Booklet and the Application Booklet.

#### §65.205. *Means and Methods—General Provisions.*

##### (a) Firearms.

(1) It is an offense to use a rifle or handgun to take a game bird.

(2) It is an offense to use or possess buckshot on public hunting lands, except during hunts by special permit that specifically designate buckshot as a lawful ammunition.

(3) A shotgun with shells containing #4 or smaller shot may be possessed when hunting under APH permit during concurrent archery-only hunts and firearms hunts, but it is an offense to use the shotgun to take species for which archery-only hunts are being held.

(4) It is an offense to use or possess a firearm other than a muzzleloading firearm of the specified caliber when participating in a hunt designated as being restricted to muzzleloaders only.

(5) The discharge of a firearm for purposes of target practice is an offense on all public hunting lands, except in an area designated by on-site signage or in the Map Booklet or Application Booklet as a shooting range or target practice area.

##### (b) Archery.

(1) On public hunting lands, lawful archery equipment is as defined in Subchapter A of this chapter (relating to Statewide Hunting and Fishing Proclamation).

(2) It is unlawful to possess a firearm while participating in archery-only hunts conducted under special or regular permit.

##### (c) Trapping.

(1) The use of deadfalls or lethal chemicals for taking wildlife resources is prohibited.

(2) The use of traps and snares is an offense except:

(A) in accordance with regulations established for fishing; or

(B) when designated as a legal means of taking furbearing animals, predatory animals, or alligators.

(3) On specific units of public hunting lands as designated in the Map Booklet, it is lawful to use traps and snares for taking furbearing animals or predatory animals in accordance with regulations established by Subchapter P of this chapter (relating to Statewide Furbearing Animal and Trapping Proclamation, provided that placement of the set trap or snare is:

(A) no closer than 50 yards from the nearest designated road or public hunting lands boundary; and

(B) no closer than 400 yards from the nearest designated campsite; and

(C) each trap or snare is visibly and legibly marked with the number of the trapper's current APH permit.

(d) Falconry. It is an offense to use a raptor to hunt game birds, game animals, or rabbits and hares except during the seasons provided in this subchapter and in accordance with the means, methods and special restrictions as provided in Subchapters A and P of this chapter (relating to Statewide Hunting and Fishing Proclamation; Migratory Game Bird Proclamation).

##### (e) Hunting with dogs.

(1) It is an offense to use a dog or dogs in hunting deer, exotic mammals, pronghorn antelope, desert bighorn sheep, javelina, or turkey, except as provided in paragraphs (2) and (3) of this subsection.

(2) It is an offense to use a dog or dogs in trailing wounded deer or wounded exotic mammals without having first obtained written permission from an employee of the department.

(3) It is an offense to use a dog or dogs in hunting feral hogs on public hunting lands except as may be provided in the Map Booklet or by special permit condition.

(4) It is an offense to use a dog or dogs in hunting furbearing animals or predatory animals during daylight hours within an open general season for taking deer on public hunting lands.

#### §65.206. *Taking of Wildlife Resources.*

##### (a) General provisions.

(1) It is unlawful to take or attempt to take wildlife resources on public hunting lands at any time other than during the open seasons provided in this subchapter, by means or methods not prescribed in this subchapter, or to take more than the daily bag limits or to have in possession more than the possession limits as provided in this subchapter.

(2) Other than on areas and for species for which no permit is required, none of the wildlife resources of the public hunting lands may be taken except by holders of permits that have been issued by the department.

(3) It is an offense to take or attempt to take a wildlife resource, or any portion thereof on public hunting lands, except during the specific days and time periods provided for taking the specified wildlife resource. A wounded or lost animal must be recovered and taken into possession during the authorized hunt period in order for any portion thereof to be claimed by the hunter. For purposes of scientific investigation, employees of the department may remove parts from specimens harvested on public hunting lands.

(4) Except for fishing and hunting predators, furbearers, alligators, or frogs, it is an offense to hunt wildlife resources during the hours between one-half hour after sunset and one-half hour before sunrise.

(5) It is an offense to bait wildlife on public hunting lands, except as provided for trapping furbearing animals or predatory animals, taking alligator by special permit, fishing, or when performed at the direction of the department as a management tool.

(6) The departmental representative in charge shall be authorized to define legal game at the initiation of the hunt.

(b) Taking of specific wildlife resources.

(1) Deer—Unless otherwise specified for designated areas, the hunting of deer of either sex is legal during the archery-only season.

(2) Exotic mammals—Legal species, hunt days, shooting hours, means and methods, bag and possession limits, and permit requirements for taking exotic mammals from specific units of public hunting lands are as provided in this subchapter and as designated in the Map Booklet and Application Booklet or specified on the permit.

(3) Desert bighorn sheep.

(A) Permit issuance.

(i) Bighorn sheep hunting permits are authorized for issuance to persons selected by random drawing. Only persons who are 17 years of age or older at the time of application are eligible to participate in the random drawing.

(ii) Bighorn sheep hunting permits are authorized for issuance to persons selected by membership of a desert bighorn sheep cooperative unit.

(iii) Upon authorization of the executive director, bighorn sheep hunting permits may be issued to persons selected by means of an auction conducted by the Foundation for North American Wild Sheep.

(B) Hunter orientation. The department may require that each person receiving a bighorn sheep hunting permit attend an orientation conducted by the department prior to the hunt.

(C) Certification. The department may require that any bighorn sheep taken must be certified by an accompanying department wildlife biologist as a harvestable animal prior to the kill. The permit must be possessed while hunting.

(D) Tagging. Any bighorn sheep must be tagged within 72 hours after being taken with a permanent tag issued and affixed in the horn by a designated representative of the department. The tag shall remain in the horn throughout the existence of the trophy.

(E) Tag fees.

(i) The tag fee is waived for each permittee selected by means of a random drawing.

(ii) The tag fee is \$300 for each permittee selected by membership of a desert bighorn sheep cooperative unit, payable in advance of the hunt and is non-refundable.

(iii) The tag fee for each permittee selected by means of auction conducted by the Foundation for North American Wild Sheep is in the amount of the department's share of the auction price, payable in advance of the hunt, and is non-refundable.

(4) Predatory animals. It is an offense if a person during hunts by special or regular permit takes any predatory animal other than the species specified on the permit.

(5) Alligator.

(A) Means and methods: as specified on the permit or attachments.

(B) Tagging requirements and tag fees.

(i) It is an offense if a hunter does not possess a State of Texas alligator hide tag while engaged in the act of hunting alligators. There is no charge for the state tag and it is available at the area prior to the hunt. The tag must be attached to the alligator immediately after it is taken.

(ii) Successful hunters who opt to commercially dispose of their alligator will be assessed an additional tagging fee of \$120 for attachment of the U.S. Fish and Wildlife Service alligator hide tag required for lawful sale of the hide.

(iii) Successful hunters who do not opt to commercially dispose of their alligator will not be required to obtain the U.S. Fish and Wildlife Service alligator hide tag or to pay the tagging fee.

#### *§65.207. Tagging of Game.*

(a) It is an offense if a person possesses the carcass of a deer or turkey taken from public hunting lands which does not have attached to it a properly completed valid tag from the person's hunting license.

(b) It is an offense if a person removes a deer, exotic mammal, javelina, pronghorn antelope, desert bighorn sheep, turkey, or alligator taken under special or regular permit from a public hunting area without attachment of a special tag issued by the public hunting area.

*§65.208. Penalties.* The penalties for violation of this subchapter are prescribed by Parks and Wildlife Code, §81.007. With respect to violations in designated state parks, the penalties are prescribed by Parks and Wildlife Code, §62.069.

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 25, 1996.

TRD-9604250

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

Proposed date of adoption: May 9, 1996

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



## Subchapter I. Angelina-Neches Scientific Area Number 1

### • 31 TAC §§65.231-65.236

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks*

and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Parks and Wildlife Department proposes repeal of §§65.231-65.236, concerning the Angelina-Neches Scientific Area Number 1. The provisions of these sections have been incorporated into 31 TAC Chapter 65, Subchapter H, concerning the Public Hunting Lands Hunting and Fishing Proclamation. This action renders §§65.231-65.236 redundant.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the repeal of rules as proposed is in effect, there will be no fiscal implications for state or local governments.

Dr. Harvey also has determined that for each of the first five years the repeal of rules as proposed is in effect the public benefit anticipated as a result of enforcing the repeals of rules as proposed will be consistency in regulations concerning hunting and fishing activities on public lands under the control of the department. Further, redundant sections of the Texas Administrative Code will be removed.

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

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

Comments on the proposed repeal of rules may be submitted to Herb Kothmann, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770 or 1-800-792-1112, extension 4770.

The repeals are proposed under Parks and Wildlife Code, §§13.101-13.111 and §§81.501-81.506.

The proposed repeals affect Parks and Wildlife Code, §§13.101-13.111 and §§81.501-81.506.

#### *§65.231. Application.*

#### *§65.232. Authority.*

#### *§65.233. Effective Date.*

#### *§65.234. General Regulations.*

#### *§65.235. Fishing Regulations.*

#### *§65.236. Wildlife Regulations.*

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 25, 1996.

TRD-9604156 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Proposed date of adoption: May 9, 1996

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



## Subchapter P. Alligators

### • 31 TAC §§65.351-65.355, 65.357-65.359, 65.364

The Texas Parks and Wildlife Department proposes amendments to §§65.351-65.355, 65.357-65.359, and 65.364, concerning Alligators. The amendments are necessary to fulfill the department's statutory obligation to prevent depletion and waste of the state's wildlife resources, and, in general, preserve and enhance existing populations while allowing for harvest according to prescribed wildlife and fisheries tenets.

The proposed amendments will function to clarify language in the interest of clarity; alter or delete definitions; add provisions to the facility standards for alligator farms; clarify tag requirements and time restrictions for alligator line sets; and establish hatching and hatchling survival standards for permit renewal.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the decreased incidental mortality of alligators and the clarification of facility standards for alligator farms.

There will be an effect on small businesses and there is an anticipated economic cost to persons required to comply with the rules as proposed; however such costs cannot be quantified because they will vary according to the size of the facility.

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

Comments on the proposed rule may be submitted to Robert Macdonald, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112, extension 4775.

The amendments are proposed under Parks and Wildlife Code, Chapter 65, which provides the Commission with the authority to establish regulations governing the propagation and harvest (both commercial and recreational) of alligators.

The amendments affect Parks and Wildlife Code, Chapter 65.

*§65.351. Application.* Except for special permits issued under the [Texas] Parks and Wildlife Code, Chapter 43, or contracts [for the removal of reptiles entered into] under the [Texas] Parks and Wildlife Code, §81.404, **this subchapter governs** [these sections govern] the taking, possession, propagation, transportation, exportation, importation, and sale of alligators [or parts of alligators] to the exclusion of other regulatory and licensing laws in [compliance] with [the] Texas Parks and Wildlife Code, **Chapter 65** [§65.002].

*§65.352. Definitions.* The following words **and** [or] terms, when used in this **subchapter** [title], shall have the following meanings, unless the context clearly indicates otherwise. **All other words and terms shall have the meanings assigned in Subchapter A of this chapter and in the Parks and Wildlife Code.**[:]

Alligator—**The** American alligator (*Alligator mississippiensis*). **For the purposes of this subchapter, alligator means any American alligator, living or dead, or any part of an alligator, including their eggs** [(Texas Parks and Wildlife Code, §65.001(1))].

[Alligator buyer—A person who buys alligators, alligator hides, or any part of an alligator (Texas Parks and Wildlife Code, §65.001(2))].

Alligator egg collector—A licensed alligator hunter who **is authorized by the department to collect, possess, or transport** [collects] alligator eggs [from wild alligator nests and transports or delivers them as prescribed by department authorization].

[Alligator hunter—A person who takes dead or live alligators or any part of an alligator (Texas Parks and Wildlife Code, §65.001(3))].

Alligator farm—A **premises where alligators are bred or raised** [An enclosed area] under **department-sanctioned** [controlled] conditions[, constructed so as to prevent the ingress and egress of alligators from surrounding public or private lands or waters and meeting other specifications prescribed by the Department, where alligators are bred or raised under controlled conditions].

Alligator farmer—A person holding an alligator farmers permit [who possesses live alligators in captivity for commercial purposes including the selling of alligators, eggs, hides, meat, or other parts of an alligator.]

[Alligator parts—The hide or skin, teeth, meat, or any other part of an alligator, excluding eggs.]

Alligator shed—An enclosed structure **used to house alligators** [capable of maintaining a minimum constant temperature of 80 degrees fahrenheit, containing dry and wet areas of sufficient surface area to permit all alligators to completely submerge in water and completely exit from water and orient in any direction without touching the sides of the tank(s)].

[Consumer—A person who legally obtains any processed or manufactured alligator part for personal use.]

[Department—The Texas Parks and Wildlife Department, or a specifically authorized employee of the Parks and Wildlife Department.]

Incubator—An apparatus designed and used for the purpose of incubating alligator eggs [and meeting other specifications of the Department].

[Landowner—a person who owns land which the department has designated as alligator habitat.]

[Landowner's agent—a person who has written authorization (from a landowner) to represent that landowner.]

[Nonresident—A person who is not a resident of Texas (Texas Parks and Wildlife Code, §65.001(7)).]

[Person—An individual acting in his or her own behalf or as agent for another.]

[Possess—The act of having in possession or control, keeping, detaining, restraining, or holding as owner or as agent, bailee, or custodian for another (Texas Parks and Wildlife Code, §65.001(4)).]

[Resident—A person who has been a resident of this state for more than six months immediately before applying for an alligator hunter's or buyer's license. (Texas Parks and Wildlife Code, §65.001(6))]

[Sale—Includes barter and other transfers of ownership for consideration.]

[Take—The act of hooking, netting, snaring, trapping, pursuing, shooting, killing, or capturing by any means or device and includes the attempt to take by the use of any method (Texas Parks and Wildlife Code, §65.001(5)).]

### §65.353. General Rules.

(a) No person may take, possess, purchase or sell alligators[, parts of alligators] or goods manufactured from alligators except as provided in this subchapter.

(b) No person may take alligators on statutory wildlife sanctuaries or on rights-of-way of public roads and highways.]

(b)(c) Each alligator or part of an alligator taken or possessed in violation of this subchapter shall constitute a separate offense.

(c)(d) Pole hunting is prohibited.

(d)(e) An alligator hunter must possess on his or her person one or more current alligator hide tags while taking alligators. **At least** [provided that only] one licensed hunter **must** [needs to] possess current hide tags **when accompanied by another** [among a group of] licensed **hunter** [hunters accompanying each other].

(e)(f) An alligator hunter who possesses valid hide tags shall kill and immediately tag all alligators removed from a taking device.

### §65.354. Licenses, Permits, and Fees.

(a) The licenses and fees required for activities authorized by this subchapter are [as prescribed under provisions of the Texas Parks and Wildlife Code, Chapter 65, or as prescribed in this subsection, and are]:

(1)-(9) (No change.)

(b) No person may **hunt** [take, attempt to take, possess,] or accompany another person who is **hunting** [attempting to take an] alligator in this state during the open season established in this subchapter for taking alligators unless he or she has acquired and possesses an alligator hunter's license or is otherwise exempted [under Chapter 43 Texas Parks and Wildlife Code].

(c) Except as **otherwise** provided, [by §65.359] no person may purchase or possess after purchase an alligator[, alligator hide, or any part of an alligator] taken in this state **without possessing a valid** [unless he or she has acquired and possesses an] alligator buyer's license or is otherwise exempted [under Chapter 43 Texas Parks and Wildlife Code].

(d) **No person may possess** [An alligator farmer permit shall be acquired by any person possessing] one or more live alligators or alligator eggs **without possessing a valid alligator farmer permit.** [unless otherwise exempted under Chapter 43 Texas Parks and Wildlife Code.]

(e) No person may remove **or** [and] possess alligator eggs from wild nests or accompany anyone removing eggs from wild nests **without possessing a valid** [unless he or she has acquired and possesses an] alligator hunter's license and an alligator egg collector's permit. **Landowners on their own property** [provided, however, landowners] are not required to **possess an egg collector permit when accompanying licensed** [be permitted as] egg collectors [to accompany authorized egg collectors on their property]. An egg collector's permit will only be issued to those persons who complete the prescribed application form provided by the department.

(f) (No change.)

(g) Applicants for an alligator buyer's license must comply with federal licensing and permit requirements to engage in commerce involving alligators[, alligator hides, and parts].

(h) (No change.)

### §65.355. Means and Methods.

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

(c) Legal means for taking alligators in the wild are as follows:

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

(3) **Lawful archery equipment** [Long (including compound) bow] and barbed arrow; and

(4) (No change.)

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

(f) **A hunter shall set no more than one line per unused hide tag in possession.**

(g)(f) Alligator hunters shall inspect their hooks and lines and remove captured alligators daily. All hooks and lines shall be removed when an alligator hunter's harvest quota is reached.

(h)(g) Each baited line shall be labeled with a permanent, legible **gear** tag that contains the full name and complete current address of the licensed alligator hunter or hunters that set and tend the line. **The gear tags required by this subsection shall be plainly visible when attached to a line.**

(i)(h) **Hook-bearing [Baited hooks and] lines may not be set prior to the general open season and shall be removed no later than sunset of the last day of the open season.**

(j)(i) No person possessing hide tags issued for privately-owned land or water may take alligators on adjacent publicly-owned

water unless the taking device is anchored to privately-owned land or the person is on privately-owned land when the taking occurs, provided that any alligator captured on a legal taking device that is anchored to private land or held by a person on private land may be killed from a floating craft on public water.

(k)[(j)] Chemicals may not be used to take or kill alligators.

(l)[(k)] A person possessing hide tags for publicly-owned areas may take alligators by legal means from a floating craft on public water for which the tags are issued.

*§65.357. Open Seasons, Open Areas, and Bag Limits-Hunting in the Wild.*

(a) [Open seasons are as follows:]

[(1)] The general open season for taking alligators in the wild is September 10 through September 30.

[(2)] Propagated alligators may be taken only during periods authorized by the department.

[(3)] Alligator eggs may be taken only during periods specified on department authorization forms.]

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

*§65.358. Possession.*

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

(c) No person other than an alligator farmer may possess live alligators at any time, **except for licensed hunters retrieving animals to be killed** [provided that a licensed alligator hunter may possess a live alligator on any legal capture device while retrieving that animal to be killed].

(d) No person other than an alligator farmer may possess alligator eggs at any time. **An** [except that an] alligator egg collector may possess alligator eggs for transport to an alligator farmer provided that each clutch of eggs is accompanied by a legal nest stamp and documented by an egg collection authorization.

*§65.359. Importation, Exportation, Purchase, and Sale.*

(a) Alligators[, parts of alligators, or goods manufactured from alligators may be imported if the alligators, parts of alligators, or goods manufactured from alligators were] lawfully taken **out-of-state may be imported to this state, provided the importation occurs pursuant to the issuance of** [in another state or country and the person, firm or corporation importing alligators or alligator parts has obtained] an alligator import permit **by** [from] the department, **or each alligator is accompanied by documentation described in subsection (b) of this section**[, a copy of which accompanies these items].

(b) All alligators[, parts of alligators, or goods manufactured from alligators] possessed, sold, purchased, exported, or imported shall be accompanied by [documented] evidence **of lawful take, including but not limited to:** [that they were lawfully taken. Documented evidence shall consist of, but not be limited to]:

(1) a resource user license or permit number **issued** [allowing the taking of alligators and tags or other identification required] by the state or country of origin, **which** shall be firmly attached to the alligator[, parts of alligator, or goods manufactured from alligators]; and

(2) a tag or label [is] affixed to the outside of any package or container of alligators, **specifying the contents and any** [or alligator parts that specifies type of contents, indicates quantity contained, and lists] applicable license or permit numbers.

(c) Purchases of alligators [and alligator parts] are restricted as follows.

(1) A person holding only an alligator hunter license may not purchase **alligators** from anyone.

(2) A licensed alligator buyer may purchase legally taken alligators[, alligator hides or parts of alligators] from a licensed alligator hunter, another alligator buyer, an alligator farmer, an import permit holder or a person designated as a nuisance control hunter by ADC under a cooperative agreement with the department.

(3)-(6) (No change.)

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

*§65.364. Alligator Farm Facility Requirements.*

(a) A[All] first-time **applicant** [applicants] for an alligator farmer's permit must, **prior to permit issuance**, show evidence of the following [minimum facilities] during a [required] facility examination by **the** department [personnel prior to permit issuance]:

(1) [Secured premises with] adequate barriers to prevent escape of enclosed alligators and entry by alligators from outside the farm; [and to deter theft of alligators.]

(2) **a reliable** [Reliable] source of clean, fresh water;[.]

(3) **a minimum space, per alligator, equivalent to the square of the alligator's length, rounded upwards to the nearest whole foot, except for alligators greater than six feet in length in outdoor facilities; and** [Provision for both dry ground and pooled water within the secured area].

(4) provision for [winter] protection **from the cold**, either through adequate denning space or an enclosed, controlled-temperature environment.

(b) **If the facility is an indoor facility:**

(1) **alligators shall have access to equal areas of accessible dry ground and pooled water with respect to the minimum space requirements established by this section;**

(2) **the dry ground shall permit complete exit from the water and the pooled water shall permit complete submer-**sion;

(3) **the minimum space requirements of this section shall be provided in a fashion that permits all alligators to orient in any direction without touching the sides of the tank;**

(4) **all alligator sheds shall be maintained a minimum temperature of 80 degrees F.; and**

(5) **all alligator sheds shall be cleaned and washed daily.**

(c) **If the facility is an outdoor facility:**

(1) **there shall be both an inner and outer chain-link fence extending at least four feet above ground and six inches below ground. The outer fence must completely enclose the facility. The inner fence must completely enclose any ponds and shall not be closer than 30 feet to the enclosed ponds. All gates in the inner and outer fences shall have locks;**

(2) **wild-trapped alligators shall be stocked at a male-to-female ratio of 1:5 and total stocking density shall be no more than 24 alligators per acre;**

(3) **captive-bred alligators shall be stocked at a male-to-female ratio of 1:4 and total stocking density shall be no more than 40 alligators per acre; and**

(4) **adequate nesting material must be provided.**

(d) **All alligators in a facility must be fed daily, except that alligators may remain unfed for seven days prior to harvest.**

(e)[(b)] Alligator farmers possessing alligator eggs outside an alligator nest shall house such eggs in identifiable original clutch groups in an incubation facility approved by the Department.

(f)[(c)] All alligator farmers possessing hatchling alligators shall house such hatchlings in [temperature controlled] alligator sheds.

(g)[(d)] Alligator farmers shall **segregate** [house] alligators **by length** [of different lengths into at least three groups] , providing, **at a minimum, separate areas for those alligators:**

(1) [separation for all alligators] less than two feet in length;[,] and

(2) **between two and** [to] four feet in length;[,] and

(3) over four feet in length. [Land and water areas sufficient for complete submersion or complete exit from water shall be provided for each group of alligators held.]

(h)[(e)] Complete written records of all [changes in] alligator stock shall be kept, **including shipping** [and made available for examination by department personnel. Shipping] tickets, invoices, **and** [or] bills of lading [shall be maintained to show source of supply or disposition of alligator stock].

(i)[(f)] Alligator farmers may collect eggs from nests of captive alligators inside alligator farms at any time; provided each clutch is accompanied by a captive nest stamp provided by the department. Nesting activity of captive alligators shall be recorded on a daily basis. **An annual summary** [Summaries] of nest constructed, eggs collected, number of viable eggs set, and hatching success shall be recorded on forms provided by the department and submitted to the department by September 15 of each year.

(j)[(g)] Alligator farmers[,] possessing alligator eggs collected from the wild shall **complete and submit an annual** [file a] report to [on forms (PWD-371A) provided by] the Department by September 30. **The report shall be made using form PWD-371A.** [Information shall include nest stamp number, date clutch received, landowner's name, number of eggs in clutch collected, number of eggs placed in incubator, number of eggs hatched, date eggs hatched, and name of farmer if eggs are transferred.]

(k)[(h)] All alligators 48" or less in length shall be housed in alligator sheds unless a written authorization from the department is received to move them to outside growth areas.

(l)[(i)] Alligator egg incubators shall:

(1) maintain a water and air temperature of 85 to 91 degrees fahrenheit during egg incubation.

(2) utilize temperature monitors.

(3) utilize alarm system which alerts farmer when temperatures are above or below the prescribed range.

(4) maintain backup system to supply power and water if main power source fails.

(m) **The department reserves the right to deny permits to:**

(1) **an incubation facility with less than a 70% hatchling success over any period of two consecutive years; and**

(2) **a farm facility with less than a 70% hatchling survival (hatch-to-harvest) over any period of two consecutive years.**

(n)[(j)] All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation. **The department reserves the right to deny permits to any person who fails to comply with the provisions of this section.**

(o)[(k)] No alligator eggs collected or obtained under authority of **this subchapter** [these rules] may be shipped out of state.

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

Issued in Austin, Texas, on March 25, 1996.

TRD-9604248

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

Proposed date of adoption: May 9, 1996

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

◆ ◆ ◆  
TITLE 34. PUBLIC FINANCE  
Part I. Comptroller of Public Accounts  
Chapter 3. Tax Administration

Subchapter F. Motor Vehicle Sales Tax

• 34 TAC §3.74

The Comptroller of Public Accounts proposes new §3.74, concerning seller responsibility. Senate Bill 1445, 74th Legislature, 1995, amends the Tax Code, §152.0411 and §152.044, effective January 1, 1996, to provide that licensed motor vehicle dealers must collect the tax imposed on a sale and remit that tax to a county tax assessor-collector.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. The section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the new section may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The new section implements Tax Code, §152.0411 and §152.044.

§3.74. *Seller Responsibility.*

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

(1) Date of sale—The day the motor vehicle is delivered to the purchaser unless otherwise specified by written agreement.

(2) Dealer—A person, who holds a general distinguishing number issued pursuant to the terms of Article 6686, Revised Statutes as amended, and the Transportation Code, Chapter 503.

(3) Retail sale—A sale of a motor vehicle other than a sale in which the purchaser is a dealer who acquires a vehicle for the exclusive purpose of resale. The term does not include a motor vehicle purchase by a dealer who operates the motor vehicle with metal dealer tags in accordance with Article 6686, Revised Statutes, and the Transportation Code, Chapter 503.

(4) Seller-financed sale—A retail sale of a motor vehicle by a dealer in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received.

(5) Total consideration—The amount paid or to be paid for a motor vehicle and its accessories attached on or before the sale. The term does not include separately stated finance, or interest charges on credit extended under a conditional sale or other deferred payment contract, or the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle.

(b) Tax permit. Every dealer making seller-financed sales must apply to the comptroller for a tax permit. Each entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. The permit application will be furnished by the comptroller. The permit cannot be transferred from one owner to another.

(c) Collection of the tax.

(1) Seller-financed sales. The selling dealer must collect tax on the total consideration paid as the payments are received. The total downpayment is subject to tax unless the payment is itemized to indicate nontaxable charges. The tax is a debt of the purchaser to the seller until paid.

(2) Retail sales other than seller-financed sales. Unless the sale is exempt, the selling dealer must collect the tax on the total consideration paid for the motor vehicle. The tax is a debt of the purchaser to the seller until paid.

(d) Remittance of the tax.

(1) Seller-financed sales.

(A) Each selling dealer must remit the tax due to the comptroller as the receipts are received. On or before the 20th day of the month following each reporting period, each selling dealer shall file a consolidated return with the comptroller together with the tax payment for all locations operated by the entity.

(B) The returns must be signed by the person required to file the report or by the person's duly authorized agent.

(C) The returns will be filed on forms prescribed by the comptroller. The fact that the dealer does not receive the form or does not receive the correct forms from the comptroller for the filing of the return does not relieve the selling dealer of the responsibility of filing a return and payment.

(D) The return should be completed attributing the receipts to the county in which the motor vehicle certificate of title is applied for.

(E) Selling dealers owing tax of less than \$1,500 per quarter may file returns quarterly. The quarterly reporting periods end on March 31st, June 30th, September 30th, and December 31st.

(F) Selling dealers owing \$1,500 or more in tax per quarter must file monthly returns unless a seller prepays the tax.

(G) Prepaying the tax; discounts.

(i) Each dealer may retain 0.5% of the amount of tax due as reimbursement for the expense of collecting the tax.

(ii) A dealer who makes a prepayment based upon an estimate of tax liability may retain an additional 1.25% of the amount due. The prepayment must be made on or before the 15th day of the second month of the quarter for which the tax is due. Monthly prepayments are due on or before the 15th day of the month and are also entitled to the additional 1.25% deduction.

(I) On or before the 20th day of the month following the quarter for which a prepayment was made, the dealer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the dealer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the selling dealer will be mailed an overpayment notice or refund warrant.

(II) If a dealer does not file a quarterly or monthly return together with payment on or before the due date, the dealer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the selling dealer. After the first 60 days delinquency, interest begins to accrue at the rate of 12% annually.

(H) A transaction is considered paid in full when the purchaser of the motor vehicle provides that motor vehicle to the seller as consideration for the purchase of another motor vehicle from the same seller. The remainder of any tax owed on the sale must be reported in the report period in which the motor vehicle is traded in.

(I) Tax remitted to the county tax assessor-collector at the time of registration and title transfer will be considered to be intended to satisfy the tax liability for that transaction and no refund will be available if the purchaser fails to satisfy his total liability to the dealer.

(J) If the selling dealer fails to apply for certificate of title and registration within 60 days of the date of sale, the seller becomes liable for all unremitted tax on the total consideration and must remit that amount on the first return due after the expiration of the 60 days.

(K) If the selling dealer transfers the right to receive payments on a sale, the dealer is liable for the unpaid tax due on the total consideration and must remit that amount in the report period in which the transfer of the right to receive payments is made. The dealer may not take a deduction in the amount of tax due if a transfer at a discount is made. The right to receive payments is transferred and the tax remittance accelerated regardless of recourse to the seller or any other condition.

(2) Sales other than seller-financed sales.

(A) The selling dealer must remit the tax, along with the properly completed tax statement, to the county tax assessor-collector by the 20th working day following the date of sale.

(B) Documentation must be retained to indicate that the proper amount of tax was submitted to the county tax assessor-collector. A copy of the receipt for taxes issued by the county tax assessor-collector will satisfy this requirement.

(e) Resale certificates and exemption documentation.

(1) A seller may accept a motor vehicle resale certificate only from a dealer as defined in this section. To be valid the motor vehicle resale certificate must show the general distinguishing number issued pursuant to Article 6686, Revised Statutes, as amended, and the Transportation Code, Chapter 503. See §3.95 of this title (relating to Motor Vehicle Sales Tax Resale Certificate; Sales for Resale).

(2) A seller may accept a properly completed Texas Motor Vehicle Sales Tax Exemption Certificate-For Vehicles Taken



Out of State, in lieu of collecting tax on motor vehicles that will be removed from this state without being operated other than to remove the motor vehicle from this state. See §3.90 of this title (relating to Motor Vehicles Purchased for Use Outside of Texas).

(3) Exemptions provided for in the Tax Code, Chapter 152, Subchapter E, other than those discussed in paragraphs (1) and (2) of this subsection, shall be indicated on the tax statement provided to the county tax assessor-collector at the time of tax remittance and title application.

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 26, 1996.

TRD-9604202      Martin E. Cherry  
Chief, General Law Section  
Comptroller of Public Accounts

Earliest possible date of adoption: May 3, 1996

For further information, please call: (512) 463-4028

## Subchapter O. State Sales and Use Tax

### • 34 TAC §3.322

The Comptroller of Public Accounts proposes an amendment to §3.322, concerning exempt organizations. The Tax Code, §151.309, was amended to exempt sales, leases, or rentals of taxable items to a state or governmental unit of a state that borders Texas only to the extent that state or a governmental unit of that state reciprocates and exempts the State of Texas or a political subdivision of the State of Texas. The Tax Code, §151.310, was amended to exempt two tax-free sales or auctions during a calendar year by an organization exempt under subsection (a)(1) as religious, educational, or charitable and (a)(2) as Internal Revenue Code, §501(c)(3), (4), (8), (10), or (19). The amendment also clarifies the definitions of organizations exempt as religious, educational, or charitable.

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

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

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The amendment implements the Tax Code, §151.309 and §151.310.

#### §3.322. Exempt Organizations.

(a) (No change.)

(b) Entities that must prove exempt status. Entities or organizations that may qualify for exempt status include:

(1) a nonprofit charitable or eleemosynary organization **devoting** [that devotes] all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing **food, clothing** [foods], drugs, treatment, shelter, [clothing], or **psychological** counseling **directly to indigent or similarly deserving members of society** [to needy persons] with its funds derived **primarily** [, at least in part,] from sources other than fees or charges for its services. **If the organization engages in any substantial activity other than the activities described in this section, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this**

**provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services that are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision. Although these organizations do not qualify for exemption under this category of exemption as charitable organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the Internal Revenue Service (IRS) under the Internal Revenue Code, §501(c). Chambers of Commerce may qualify under paragraph (6) of this subsection;**

(2) a nonprofit [educational] organization **or governmental entity** whose activities are devoted solely to systematic instruction, **particularly in the commonly accepted arts, sciences, and vocations,** and [that] has a regularly scheduled curriculum, **using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization** [or] that has activities consisting solely of presenting discussion groups, forums, panels, lectures, or other similar programs, **may qualify for the exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The organization will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Although these organizations do not qualify for exemption under this category of exemption as educational organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the Internal Revenue Code, §501(c);**

(3) a nonprofit [religious] organization that is an organized group of **people** [persons] regularly **meeting** [associating] for the **primary** [sole] purpose of holding, conducting, and sponsoring religious **worship** services according to the rites of **their sect. The organization must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services** [the organization]. An organization that [merely] supports or encourages religion as an incidental **part of its overall purpose, or one** [an organization] whose general purpose is furthering religious work or instilling its membership with a religious understanding, **will** [may] not qualify for **exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups who meet for the purpose of holding prayer meetings, bible study, or revivals. Although these organizations do not qualify for exemption under this category of exemption as religious organizations, they may qual-**

ify for the exemption under the Tax Code, §151. 310(a)(2), if they obtain an exemption from the IRS under the Internal Revenue Code, §501(c) [exempt status unless all of its other purposes and activities qualify the organization for exempt status under other provisions of this section];

(4)-(9) (No change.)

(c) Entities always exempt. The following entities and organizations are exempt under the law and are not required to request and prove exempt status **except to send information as requested by the comptroller to verify its exempt status under this subsection:**

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

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

(f) Purchases by an exempt organization.

(1) (No change.)

(2) The purchase, lease, or rental of a taxable item to an exempt organization listed in subsections (c) and (b)(4), (6), (7), [or] (8), or (9) of this section is exempt from tax when the organization or an authorized agent pays for the taxable item and provides the vendor an exemption certificate in lieu of tax.

(3)-(6) (No change.)

(g) Sales by an exempt organization.

(1) An exempt organization which sells taxable items must obtain a sales tax permit and is responsible for collecting and remitting tax on all sales of taxable items made by the organization unless such sales are otherwise exempt from the tax. See [paragraph (4) of this subsection,] §3. 293 of this title (relating to Food; Food Products; Meals; Food Service), §3. 299 of this title (relating to Newspapers, Magazines, Publishers, Exempt Writings), and §3.298 of this title (relating to Amusement Services).

(2) A religious, educational, charitable, [or] eleemosynary organization, or an organization exempt under Internal Revenue Code, §501(c)(3), (4), (8), (10), or (19) that has qualified for exemption under this section, and each bona fide chapter of a qualifying organization, is not required to collect sales tax on the sales price of taxable items sold at a sale or auction held by the organization or chapter only twice [once] a calendar year and each sale or auction lasting only one day.

(A) One day is a consecutive 24-hour period. If a designated tax-free sale or auction exceeds a consecutive 24-hour period, the organization or chapter may not hold another tax-free sale or auction that calendar year. An organization or chapter may hold the two tax-free sales or auctions consecutively, but the two tax-free sales or auctions by that organization or chapter cannot exceed a maximum of 48 consecutive hours in a calendar year.

(B)[(A)] The organization may employ an auctioneer to conduct the sale or auction and pay the auctioneer a reasonable fee not to exceed 20% of the gross receipts.

(C)[(B)] If two or more exempt organizations or chapters jointly hold a tax-free sale or auction, each is considered to have held a [none may hold another] tax-free sale or auction during that calendar year.

(3) (No change.)

[(4)] Sales made by senior citizens' organizations will be exempt from tax if all of the following qualifications are met:

[(A)] all of the taxable items sold are produced exclusively by persons 65 years old or older;

[(B)] the sale is part of a fund-raising drive held or sponsored by a nonprofit organization created for the sole purpose of providing assistance to elderly persons;

[(C)] all net proceeds from the sale go to either the organization or the person who produced the taxable item sold; and

[(D)] the organization has not conducted more than four separate sales each calendar year for a total of more than 20 days per year.]

(h) Organizations that do not qualify for exempt status. Some organizations which cannot qualify for exempt status include professional groups, certain mutual benefit or social groups, political, trade, business, bar, or medical associations. **For information on exempt sales by senior citizens' organizations or exempt sales by student organizations affiliated with a college or university, see §3.316 of this title (relating to Occasional Sales and Other Tax-Free Sales).**

(i)-(j) (No change.)

(k) **Bordering states and governmental units of states that border Texas.**

(1) **The State of Arkansas, State of Louisiana, State of New Mexico, State of Oklahoma, or a governmental unit of a state that borders Texas may qualify for exemption on the purchase, lease, or rental of taxable items, but only to the extent that the bordering state or governmental unit of a state that borders Texas exempts or does not impose a tax on similar sales of items to the State of Texas or a political subdivision of the State of Texas.**

(2) **A bordering state or a governmental unit of a state that borders Texas may enter into a reciprocal agreement with the comptroller for the exemption of taxable items purchased, leased or rented to the State of Texas or a political subdivision of the State of Texas.**

(3) **The purchase, lease, or rental of a taxable item to a bordering state or a governmental unit of a bordering state is exempt from sales tax to the extent allowed under the terms of the reciprocal agreement. An exemption certificate from a qualifying bordering state or a governmental unit of a bordering state is sufficient proof of the exempt sale.**

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 25, 1996.

TRD-9604130 Martin Cherry  
Chief, General Law  
Comptroller of Public Accounts

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 463-4028

◆ ◆ ◆  
• 34 TAC §3.329

The Comptroller of Public Accounts proposes an amendment to §3.329, concerning enterprise projects. The amendment implements changes enacted by House Bill 2065, 74th Legislature, 1995. The state tax on electricity, natural gas used in a business, and on labor to refurbish buildings in an enterprise zone is eligible for refund to enterprise projects. Also, enterprise projects designated after August 31, 1995, may not apply for refunds until September 1, 1997. The maximum amount of refunds to projects designated after August 31, 1995, is \$8 million. The reference to the Texas Enterprise Zone Act has been changed to reference the Government Code.

An additional change involves a reference in subsection (a)(1) to a provision that was repealed and re-enacted in the Government Code. The definition of "enterprise project" made reference to Article 5190.7 that is now Government Code, Chapter 2303.

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

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

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The amendment implements the Government Code, §2303.505(a) and the Tax Code, §151.429(a).

### §3.329. Enterprise Projects.

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

(1) Enterprise project—A qualified business designated by the Texas Department of Commerce as an enterprise project under **Government Code, Chapter 2303.406**, [the Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7)] for a five-year period.

(2)-(4) (No change.)

(b) An enterprise project qualifies for a refund of state sales and use tax of \$2,000 for each job that has been retained or each new permanent job the enterprise project creates for a qualified employee during its designation as an enterprise project. A qualified business receiving its designation as an enterprise project after August 31, **1995** [1991], may not apply for a refund of taxes until after August 31, **1997** [1993]. **Not more than \$8 million in state sales and use taxes may be refunded to enterprise projects designated during the biennium beginning September 1, 1995.**

(c) (No change.)

(d) Subject to the limitations of subsections (b), (c), (e), (f), and (g) of this section, a refund will be made based on state tax paid purchases of:

(1) machinery or equipment for use in the enterprise zone in which the enterprise project is located; [or]

(2) building materials for use in constructing, rehabilitating, or remodeling a structure in the enterprise zone in which the enterprise project is located; [ ]

**(3) labor for remodeling, rehabilitating, or constructing a structure in an enterprise zone; and**

**(4) electricity and natural gas purchased and consumed in the normal course of business in the enterprise zone.**

(e)-(i) (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 25, 1996.

TRD-9604129      Martin Cherry  
                         Chief, General Law  
                         Comptroller of Public Accounts

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 463-4028

## Subchapter V. Franchise Tax

### • 34 TAC §3.545

The Comptroller of Public Accounts proposes an amendment to §3.545, concerning extensions. The amendment implements changes in the requirements for obtaining extensions of the due date for filing an annual franchise tax report.

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

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

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The amendment cross references 34 TAC §3.575, concerning Annual Extensions/Electronic Funds Transfer.

### §3.545. Extensions.

(a) **Except for a corporation which has been notified by the comptroller that it is required to make its franchise tax payments by electronic funds transfer (see §3.575 of this title (relating to Annual Extensions/Electronic Funds Transfer)), a [A] corporation will be granted an extension to file an annual report on or before the next November 15, if the corporation:**

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

(b) If the last report due for which a corporation paid a tax in the previous calendar year was an initial report, the payment provided in subsection (a)(3)(B) of this section must equal the greater of:

(1) an amount produced by multiplying the net taxable capital, as required to be shown on the initial report, by 0.25% for the 1993 and later reports; or

(2) (No change.)

(c) (No change.)

(d) Penalty and interest will be calculated **as though**[based on] the following **were** due dates.

(1) (No change.)

(2) If a corporation is granted an extension and pays on or before May 15, 90% or more of the tax which will be reported as due on or before November 15, then November 15 will be the due date for any additional **tax** [amounts] due.

(3) If a corporation, **on or before May 15**, [timely] requests an extension but does not qualify for an extension under paragraphs (1) or (2) of this subsection, then May 15 is the due date for 90% of the tax finally determined to be due and November 15 is the due date for 10% of the tax finally determined to be due.

(e) (No change.)

[(f) Corporations seeking an extension for the 1992 annual report must remit with the extension request at least 90% of the amount of tax reported as due on the report filed on or before November 15, 1992. The option of paying 100% of the tax paid in the previous calendar year is not available for the 1992 annual report.]

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 25, 1996.

TRD-9604128      Martin Cherry  
Chief, General Law  
Comptroller of Public Accounts

Earliest possible date of adoption: May 6, 1996

For further information, please call: (512) 463-4028

◆      ◆      ◆  
• **34 TAC §3.575**

The Comptroller of Public Accounts proposes new §3.575, concerning annual extensions/electronic funds transfer. The new section provides information concerning annual report extension requirements for corporations which are required by law to pay their franchise tax by electronic funds transfer.

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

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

Comments on the new section may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

The new section implements the Tax Code, §171.202.

*§3.575. Annual Extensions/Electronic Funds Transfer.*

(a) Effective date. This section applies beginning with the 1995 annual report.

(b) Extension to August 15. A corporation which has been notified by the comptroller that it is required to make its franchise tax payments by electronic funds transfer (see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers)) will be granted an extension to file an annual report on or before the next August 15, if the corporation:

- (1) requests the extension on or before May 15;
- (2) requests the extension on a form provided by the comptroller; and
- (3) remits with the extension request:

(A) 90% or more of the amount of tax reported as due on the report filed on or before November 15; or

(B) 100% of the tax paid in the previous calendar year.

(c) Last report—initial report. If the last report due for which

a corporation paid a tax in the previous calendar year was an initial report, the payment provided in subsection (b)(3)(B) of this section must equal the greater of:

(1) an amount produced by multiplying the net taxable capital, as required to be shown on the initial report, by 0.25% for the 1995 and later reports; or

(2) an amount produced by multiplying the net taxable earned surplus, as required to be shown on the initial report, by 4.5% for the 1995 and later reports.

(d) Paid in previous year. Any change in the amount of tax due after the end of the previous calendar year will not be considered when determining the amount of "tax paid in the previous calendar year," as this term is used in this section.

(e) Extension to November 15. A corporation granted an extension under subsection (b) of this section will be granted an extension to file an annual report on or before the next November 15, if the corporation:

(1) requests the extension on or before August 15;

(2) requests the extension on a form provided by the comptroller; and

(3) remits with the request the difference between the amount paid previously for the current reporting period and 100% of the amount of tax reported as due on the report filed on or before November 15.

(f) Penalty and interest. Penalty and interest will be calculated as though the following were due dates.

(1) If a corporation is granted an extension until August 15 and pays at least 100% of the tax paid in the previous calendar year on or before May 15, then August 15 will be the due date for any additional tax due. However, if the corporation requests, on or before August 15, an extension until November 15, and remits, on or before August 15, 99% of the amount reported as due on or before November 15, then November 15 will be the due date for any additional tax due.

(2) If a corporation is granted an extension until August 15 and pays, on or before May 15, 90% or more of the tax which will be reported as due on or before August 15, then August 15 will be the due date for any additional tax due. However, if the corporation requests, on or before August 15, an extension until November 15, and remits, on or before August 15, 99% of the amount reported as due on or before November 15, then November 15 will be the due date for any additional tax due.

(3) If a corporation, on or before May 15, requests an extension until August 15, but does not qualify for an extension under paragraph (1) or (2) of this subsection, then May 15 is the due date for 90% of the tax finally determined to be due. August 15 is the due date for the remaining 10% of the tax finally determined to be due. However, if the corporation requests, on or before August 15, an extension until November 15, and remits on or before August 15 at least 99% of the amount reported as due on or before November 15, then May 15 is the due date for 90% of the amount reported as due on or before November 15, August 15 is the due date for 9.0% of the amount reported as due on or before November 15, and November 15 is the due date for any additional tax due.

(g) No additional extensions. No extensions will be granted for annual franchise tax reports pursuant to the Tax Code, §111.057.

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 25, 1996.

TRD-9604127      Martin Cherry  
Chief, General Law  
Comptroller of Public Accounts

Earliest possible date of adoption: May 6, 1996  
For further information, please call: (512) 463-4028

Proposed date of adoption: October 1, 1996  
For further information, please call: (512) 438-3765

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 3. Income Assistance Services**

The Texas Department of Human Services (DHS) proposes an amendment to §3.301 and new §§3.7001-3.7004, concerning fingerprint imaging in its Income Assistance Services rule chapter. The purpose of the amendment and new sections is to implement new policies required by the Human Resource Code, §31.0325. The requirement is for certain adult household members to submit to the fingerprint imaging process prior to certification of Aid to Families with Dependent Children (AFDC) and food stamp benefits.

Burton F. Raiford, commissioner, has determined that for the first two-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first two-year period the sections will be in effect is an estimated additional cost of \$265,135 in fiscal year (FY) 1996, and \$403,759 in FY 1997. There will be no fiscal implications for local government. This policy is being implemented as a "test;" therefore, the department is unable to project costs or savings for fiscal years 1998, 1999, or 2000.

Mr. Raiford also has determined that for each year of the two years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the department will be implementing a welfare reform initiative passed by the 74th Texas Legislature (Regular Session 1995) in House Bill 1863. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Rita King at (512) 438-4148 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-229, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

**Subchapter C. The Application Process**

• **40 TAC §3.301**

**The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.**

**The amendment implements the Human Resources Code §§22.001-22.030 and §31.0325.**

§3.301. Responsibilities of Clients and *the Texas Department of Human Services (DHS) [DHS]*.

(a) To apply, the client must complete the application process. This includes

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

**(6) submitting to the fingerprint imaging process unless exempt as specified in §3.7002 of this title (relating to Individuals Exempt from Fingerprint Imaging Requirements).**

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

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

Issued in Austin, Texas, on March 26, 1996.

TRD-9604215  
Glen Scott  
General Counsel, Legal Services  
Texas Department of Human Services

◆ ◆ ◆  
**Subchapter QQ. Fingerprint Imaging**

• **40 TAC §§3.7001-3.7004**

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The new sections implement the Human Resources Code §§22.001-22.030 and §31.0325.

*§3.7001. Fingerprint Imaging Requirements.*

(a) Aid to Families with Dependent Children (AFDC). AFDC adults and minor parents with AFDC children (including disqualified household members) as stipulated in Human Resources Code, §31.0325 must submit to the fingerprint imaging process when an application for AFDC is filed with the Texas Department of Human Services (DHS). Fingerprint images must be taken or be on record at the time AFDC periodic reviews are initiated.

(b) Food stamps. Adult household members and minor head of food stamp households must submit to the fingerprint imaging process when an application for food stamps is filed with DHS. Fingerprint images must be taken or be on record at the time food stamp recertification is initiated.

(c) Fingerprint imaging process. Individuals found to be participating or attempting to participate in the AFDC or food stamp programs twice in the same month will be referred for fraud determination as specified in §3.3401 of this title (relating to Fraud) and §3.3402 of this title (relating to Food Stamps as Obligations of the United States).

*§3.7002. Individuals Exempt from Fingerprint Imaging Requirements.*

(a) Aid to Families with Dependent Children (AFDC). Individuals applying for or receiving AFDC are exempt if they:

(1) have filed an appeal and have not waived continued benefits;

(2) have a religious belief that does not allow the person's image to be captured;

(3) are certified out of the office or are unable to come into the office;

(4) are physically unable to provide the requested fingerprint images; or

(5) temporarily cannot be fingerprinted due to equipment failure.

(b) Food stamps. Individuals applying for or receiving food stamps are exempt if they:

(1) have a religious belief that does not allow the person's image to be captured;

(2) are certified out of the office or are unable to come into the office;

(3) are physically unable to provide the requested fingerprint images;

(4) temporarily cannot be fingerprinted due to equipment failure; or

(5) are disqualified or ineligible to participate in the food stamp program.

(c) Exemptions. Exemptions will be redetermined at each initial application or complete review.

### §3.7003. Failure to Comply.

(a) If a member of the household who is required to submit to the fingerprint imaging process as specified in §3.7001(a) or (b) of this title (relating to Fingerprint Imaging Requirements) refuses or fails to be fingerprinted, the household's application or case will be denied.

(b) The household has the right to appeal the Texas Department of Human Services' (DHS's) decision in accordance with Chapter 79, Subchapters L, M, N, and O of this title (relating to Fair Hearings; Appeals Process; Hearing Procedure; and Social Services Appeals).

§3.7004. Implementation in Affected Areas. The requirements regarding fingerprint imaging as described in Subchapter QQ of this title (relating to Fingerprint Imaging) apply to recipients interviewed in offices in Tarrant and Dallas counties effective October 1, 1996, with a gradual statewide implementation as specified in Human Resources Code, §31.0325.

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 26, 1996.

TRD-9604216            Glenn Scott  
                                  Legal Services  
                                  Texas Department of Human Services

Proposed date of adoption: October 1, 1996

For further information, please call: (512) 438-3765

## Chapter 12. Special Nutrition Programs

### Child and Adult Care Food Program

#### • 40 TAC §12.3, §12.25

The Texas Department of Human Services (DHS) proposes amendments to §12.3 and §12.25, concerning eligibility of contractors and facilities and denials and terminations, in its Special Nutrition Programs chapter. The purpose of the amendments is to require nongovernmental sponsors that have fewer than three years of administrative and financial history to obtain a performance bond as a condition of eligibility and to require Child and Adult Care Food Program (CACFP) contractors to maintain a secondary business office in each region in which they sponsor a day care home. An appropriate representative of the contractor must be available during normal business hours. A contractor must notify DHS in advance of his intent to change the physical location of his secondary business office. The requirements for a contractor's primary business office are also clarified. The amendments will improve the management and accountability of the day care home portion of the CACFP, safeguard the integrity of the program and increase access of day care home providers to their sponsors. In addition, minor changes have been made to the order of the rules to clarify the CACFP contractors to whom they apply.

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

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved program efficiency and increased program integrity. Also, providers will have the most effective access to their sponsoring organizations. There will be no effect on small businesses. The costs to persons who are required to comply with proposed §12.3(b)(3) is expected to be approximately 2 1/2% of the value of the awarded contract; costs related to §12.3(b)(5) are not expected to exceed \$2,012 per year for each office. In most cases, the

costs for complying with the proposed provisions will be reimbursed as an allowable contract expense.

Questions about the content of the proposal may be directed to Keith N. Churchill at (512) 467-5837 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-226, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§33.001-33.024.

### §12.3. Eligibility of Contractors and Facilities.

(a) To be eligible to participate in the Child and Adult Care Food Program (CACFP), contractors must:

(b)[(1)] meet the definitions in 7 Code of Federal Regulations §226.2, [and] the appropriate requirements of 7 Code of Federal Regulations §§226.6 and 226.15-226.19(a), and this title. [.] **To be eligible to participate in the CACFP as a day care home sponsor, applicants must:**

(1) provide documentation that verifies that a minimum of 50 registered or licensed day care homes have signed an application and agreement, as specified by the Texas Department of Human Services (DHS), to participate under the contractor's sponsorship. Each day care home must be providing child care to at least one nonresidential child. Day care homes must be eligible to execute a sponsorship agreement in accordance with §12.6(f) of this title (relating to Agreement). DHS may approve applications for fewer than 50 day care homes, if the sponsorship of day care homes is an integral but subordinate part of an existing nonprofit or governmental community service provided by the sponsor;

(2) demonstrate that the governing authority is aware of the responsibilities and liabilities it accepts by agreeing to participate in the program;

(3) submit a comprehensive financial statement showing all expenditures and sources of income to the organization for the three years preceding the year for which application is made. [.] **Nongovernmental entities with fewer than three years of administrative and financial history that apply to participate in the CACFP as day care home contractors must submit a performance bond in an amount equal to the value of the contractor's projected annual level of reimbursement as determined by DHS. The performance bond must be obtained from a company designated in United States Treasury Circular 570 as certified to issue bonds for federally funded programs. Contractors required to submit a performance bond as a condition of eligibility for their initial application must submit a performance bond as a condition of eligibility for each contract renewal until relief from the bonding requirement has been granted, and must adjust the amount of the performance bond based on fluctuations in the value of the contract as determined by DHS. Contractors subject to the bonding requirement who have, at the time of application, less than three but more than two years of administrative and financial history, may request relief from the bonding requirement after 12 months of successful program participation. Contractors who have less than two, but more than one year of administrative and financial history, may request relief from the bonding requirement after 24 months of successful program participation. Contractors who have less than one year of administrative and financial history may request relief from the bonding requirement after 36 months of successful program participation. DHS grants relief from the bonding requirement based on the above schedule and the contractor's successful program operation;**

(4) designate the **primary physical location** at which they can be contacted, **and where all program records will be maintained and essential program management functions will be conducted. Program records must be available to Texas Department of Human Services (DHS) staff during normal business hours. Normal business hours are 8:00a.m.-5:00 p.m., Monday-Friday.** An appropriate representative of the contractor must be available to **DHS staff and providers** during normal business hours. **Contractors are considered to be available to DHS staff and providers if a representative of the contractor can be contacted by telephone at the primary business location during normal business hours, or if the contractor has established a procedure which allows DHS staff and providers to leave a voice message at the primary business location, and the contractor returns the call not later than 24 hours from the time the voice message is left.** Contractors must notify DHS in advance of their intent to change their physical location; [and]

(5) **maintain a secondary business location physically located in each DHS region in which they sponsor a day care home to conduct program management functions. An appropriate representative of the contractor must be available to DHS staff and providers during normal business hours. Normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Contractors are considered to be available to DHS staff and providers if a representative of the contractor can be contacted by telephone at the secondary business location during normal business hours, or if the contractor has established a procedure which allows DHS staff and providers to leave a voice message at the secondary business location, and the contractor returns the call not later than 24 hours from the time the voice message is left. Contractors must notify DHS in advance of their intent to change a secondary business location; and**

(6)[(5)] participate in program and program related training deemed reasonable and necessary by DHS [the Texas Department of Human Services (DHS)].

[(b) To be eligible to participate in the CACFP as a day care home sponsor, applicants must provide documentation that verifies that a minimum of 50 registered or licensed day care homes have signed an application and agreement, as specified by DHS, to participate under the contractor's sponsorship. Each day care home must be providing child care to at least one nonresidential child. Day care homes must be eligible to execute a sponsorship agreement in accordance with §12.6(f) of this title (relating to Agreement). DHS may approve applications for fewer than 50 day care homes, if the sponsorship of day care homes is an integral but subordinate part of an existing nonprofit or governmental community service provided by the sponsor.]

(c)-(i) (No change.)

#### *§12.25. Denials and Terminations.*

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

**(g) DHS denies applications for participation and terminates agreements with contractors subject to the bonding requirement identified in §12.3(b) of this title (relating to eligibility of Contractors and Facilities) if they fail to submit and maintain in good standing a performance bond in the amount established by DHS. DHS denies requests for relief from the bonding requirement if the contractor has an outstanding financial obligation to DHS.**

**(h)[(g)] Sponsoring organizations of day homes must:**

(1) terminate the participation of any day care home provider that they have determined has knowingly claimed meals for a child not enrolled for child care or not in attendance on a day that meals were claimed for the child; and

(2) submit the provider for inclusion on a list of seriously deficient providers.

**(i)[(h)] Sponsoring organizations of day homes must:**

(1) terminate the participation of any day care home provider that refuses to enter into or comply with a corrective action plan designed to achieve compliance with program requirements; and

(2) submit the provider for inclusion on a list of seriously deficient providers.

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 26, 1996.

TRD-9604239

Glenn Scott  
General Counsel, Legal Services  
Texas Department of Human Services

Proposed date of adoption: June 1, 1996

For further information, Please call: (512) 438-3765

## ◆ ◆ ◆ Chapter 15. Medicaid Eligibility

### Subchapter G. Application for Medicaid

#### • 40 TAC §15.612

The Texas Department of Human Services (DHS) proposes an amendment to §15.612, concerning processing deadlines for Medicaid applications, in its Medicaid Eligibility rule chapter. The purpose of the amendment is to clarify processing deadlines for applications.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that clients under age 65 years, who do not need to have eligibility established by DHS's Disability Determination Unit, will receive timely benefits. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long Term Care Division. Comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-213, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Service Commission with the authority to administer federal medical assistance funds.

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

#### *§15.612. Processing Deadlines.*

(a) The Texas Department of Human Services (DHS) makes and documents a decision on an application as soon as all required verification is received.

**(b) DHS must make a decision within 45 days on applications from clients age 65 years or older or who have had disability established for the Supplemental Security Income program, Social Security Title II benefits, Railroad Retirement benefits, or by Medicare for the Qualified Medicare Beneficiary and Specified Low-Income Medicare Beneficiary programs.**

**DHS must make a decision within 90 days on applications from clients who must have disability established by the DHS Disability Determination Unit. The timeliness count begins the date the completed and signed application for assistance was returned to the local DHS office.** [DHS makes a decision on applications from category 1 clients within 45 days from the date the completed and signed application for assistance was returned to the local DHS office. DHS must make a decision on category 3 and 4 applications within 90 days.]

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 25, 1996.

TRD-9604187      Glenn Scott  
                         General Counsel, Legal Services  
                         Texas Department of Human Services

Proposed date of adoption: June 1, 1996

For further information, please call: (512) 438-3765





# ADOPTED RULES

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

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

## TITLE 22. EXAMINING BOARDS Part IX. Texas State Board of Medical Examiners

### Chapter 163. Licensure

#### • 22 TAC §163.12

The Texas State Board of Medical Examiners adopts an amendment to §163.12, without changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 834).

The section as adopted will clarify the requirements for physicians to become relicensed following cancellation of their license due to non-payment of annual registration fees.

The section as adopted will function by outlining the circumstances under which a physician would not be required to pass an examination when applying for relicensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.01(c), is affected by this amendment.

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 26, 1996.

TRD-9604232      Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Effective date: April 16, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 305-7016



### Chapter 165. Medical Records

#### • 22 TAC §165.1

The Texas State Board of Medical Examiners adopts new §165.1, with changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 835).

The new section as adopted will clarify what is required of physicians with regard to the release of medical records and will establish reasonable fees for providing such records.

The new section as adopted will function by setting out the requirements for physicians to provide copies of medical records.

Comments were received from several law firms and from the Texas Osteopathic Medical Association regarding adoption of the new section.

COMMENT: An Austin law firm commented that subsection (b) of the proposed rule might be more clearly stated by substituting the language "Within 30 days after the physician has received a request for copies of a patient's medical records, the physician shall send the records to the requestor at the address specified."

RESPONSE: Subsection (b) does not require substitution of the commenter's proposed language to provide further clarity since the published proposed language is sufficiently clear and no other comments were received requesting clarification.

COMMENT: The Austin law firm further commented that subsection (h) of the proposed rule might be less in need of interpretation if it were to read: "If the request, or a supplemental request, specifically asks for copies of the billing records pertaining to medical treatment of a patient, the physician may additionally add reasonable charges for copying the billing records."

RESPONSE: Subsection (h) does not require substitution of the commenter's proposed language to decrease the need for interpretation, because the published proposed language is sufficiently clear.

COMMENT: The Texas Osteopathic Medical Association has commented that the published proposal may be improved by adding language to subsection (e) to state that physicians may charge no more than \$8.00 for each copy of x-ray film. The commenter maintains that such a fee would be fair and reasonable.

RESPONSE: The suggested addition of language in subsection (e) to the published proposal to establish fees for copies of x-ray film is not without merit, but would require a substantive change to the published proposal and result in delay of the effective date of the rule. The commenter's proposal is best addressed through future rule-making.

COMMENT: A Houston law firm commented in support of the published proposal and recommended adoption of the rule as a fair and sufficient mechanism to ensure adequate compensation to physicians for releasing medical records while preventing abusive fees charged by some physicians.

RESPONSE: The supporting comment is consistent with the published rule and is not disputed.

The new section is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §5.08, is affected by this new section.

#### §165.1. Medical Records.

(a) As required by the Medical Practice Act, §5.08(k), a physician shall furnish copies of medical records requested or a summary or narrative of the records pursuant to a written release of the information as provided by the Medical Practice Act, §5.08(j),

except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the physician may delete confidential information about another patient or family member of the patient who has not consented to the release.

(b) The requested copies of medical records or a summary or narrative of the records shall be furnished by the physician within 30 days after the date of the request and reasonable fees for furnishing the information shall be paid by the patient or someone on behalf of the patient.

(c) If the physician denies the request for copies of medical records or a summary or narrative of the records, either in whole or in part, the physician shall furnish the patient a written statement, signed and dated, stating the reason for the denial, and a copy of the statement denying the request shall be placed in the patient's medical records.

(d) For purposes of this chapter, "medical records" shall mean any records pertaining to the history, diagnosis, treatment or prognosis of the patient including copies of medical records of other health care practitioners contained in the records of the physician to whom a request for release of records has been made.

(e) The physician responding to a request for such information shall be entitled to receive a reasonable fee for providing the requested information. A reasonable fee shall be a charge of no more than \$25 for the first 20 pages and \$.15 per page for every copy thereafter. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery.

(f) The physician providing copies of requested medical records or a summary or a narrative of such records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a licensed Texas health care provider or a physician licensed by any state, territory, or insular possession of the United States or any State or province of Canada if requested for purposes of emergency or acute medical care. In the event the physician receives a proper request for copies of medical records or a summary or narrative of the medical records for purposes other than for emergency or acute medical care, the physician may retain the requested information until payment is received. In the event payment is not routed with such a request, within ten calendar days from receiving a request for the release of such records for reasons other than emergency or acute medical care, the physician shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record. Medical records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agent, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.

(g) A subpoena shall not be required for the release of medical records requested pursuant to a proper release for records under this section and the Medical Practice Act, §5.08, made by a patient or by the patient's guardian or other representative duly authorized to obtain such records.

(h) In response to a proper request for release of medical records, a physician shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.

(i) The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied so as to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law.

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 26, 1996.

TRD-9604233      Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Effective date: April 16, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 305-7016

◆      ◆      ◆  
**Chapter 190. Disciplinary Guidelines**

**• 22 TAC §190.1**

The Texas State Board of Medical Examiners adopts new §190.1, without changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 835).

The new section as adopted will provide guidance for administrative law judges and board members in contested matters related to discipline and licensure.

The section as adopted will function by promoting consistency in the exercise of sound discretion by board members in disciplinary matters.

COMMENT: One comment was received from an Austin law firm that commented that subsection (c)(10) of the proposed rule might be revised to refer to "disciplinary history of prior investigations by the board which results in other than dismissal."

RESPONSE: The commenter's suggestion does not merit changing the published proposal because the language of the published proposal is sufficiently clear and incorporates the concept central to the concern of the commenter by the limitation inherent in the terms "disciplinary history." It is acknowledged that a closed or dismissed investigation does not constitute discipline, and therefore, is not a part of a physician's disciplinary history.

The new section is adopted under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §4.12 and §4.125 is affected by this new section.

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 26, 1996.

TRD-9604234      Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of Medical Examiners

Effective date: April 16, 1996

Proposal publication date: February 6, 1996

For further information, please call: (512) 305-7016

◆      ◆      ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part I. General Land Office**

**Chapter 15. Coastal Area Planning**

**Subchapter A. Management of the Beach/Dune System**

**• 31 TAC §§15.2-15.8, 15.10**

The General Land Office adopts amendments to §§15.2-15.8 and 15.10, concerning protection of dunes and dune vegetation and the preservation and enhancement of use and access to and from Texas'

public beaches, with changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7798). Sections 15.2, 15.3, 15.6, 15.7 and 15.10 are adopted with changes. Sections 15.4, 15.5 and 15.8 are adopted without changes and will not be republished.

The amendments to Chapter 15, Subchapter A, are adopted to address scientific and practical implementation issues noted by citizens residing on the coast, the General Land Office, and the local governments with the frontline responsibility for managing Texas' public beaches and the property landward of the beaches, as required by the Open Beaches Act, Texas Natural Resources Code, §§61.001 et seq., and the Dune Protection Act, Texas Natural Resources Code, §§63.001, et seq. The state beach/dune program has been in effect since the beach/dune rules were adopted in the February 2, 1993, issue of the *Texas Register* (18 TexReg 661). Local governments have worked closely with the General Land Office and the Office of the Attorney General in implementing the program. These amendments were proposed in response to local government and citizen concerns and suggestions for improvement, and the adoption of these amendments will result in more consistent and effective management of the beach/dune system through better implementation of the state and local programs.

This subchapter and these amendments are for the use of state and local governments in managing the beach/dune system, and respectively provide and clarify the minimum standards for managing the public beach and human activities occurring on the property fronting the Gulf of Mexico, consistent with the requirements of the Open Beaches Act and the Dune Protection Act.

The General Land Office has prepared a takings impact assessment (TIA) for the adoption of these amendments. The General Land Office has determined that adoption of these amendments will not result in a taking of private real property. To receive a copy of the TIA, please send a written request to Ms. Cecilia Howells, General Land Office, Legal Services Division, 1700 N. Congress Avenue, Room 630, Austin, Texas, 78701-1495.

Editorial changes that do not alter the content of this subchapter have been made to clarify meaning and to correct grammatical errors. To save space, similar comments and responses have been combined by section. General comments and the responses to general comments on the proposed amendments are located at the end of the comment summary and response portion of this preamble.

#### Section 15.2. Definitions.

An editorial change was made to the definition of "dune" in §15.2, to clarify that the word "usually" modifies both clauses of the third sentence.

A commenter questioned the reference to the "eroding area boundary," in the revised definition of "eroding area" in §15.2, and requested an identification of the appropriate criteria for designating an eroding area boundary, the effect of establishing such a boundary, and the benefits which would accrue to a local government that established such a boundary. Each local government has the prerogative to decide whether the establishment of an eroding area boundary within their respective jurisdictions is appropriate. The definition of "eroding area boundary" in §15.2 identifies the "criteria" for establishing such boundaries. The effect and the benefit of an eroding area boundary is that local governments can establish a landward limit for the application of the eroding area restrictions contained in §15.6(f) (relating to Construction in Eroding Areas) and the local beach/dune plan. In the areas between the eroding area boundary and the most landward point of the geographic scope of the beach/dune program, the less restrictive provisions regarding beachfront construction apply. No change was made based on this comment.

Regarding the definition of "eroding area" in §15.2, a commenter stated that allowing local governments to establish a landward erosion boundary is appropriate and requested the use of the annual historical, as opposed to yearly, erosion rate and the use of a 30-year term, as opposed to a 60-year term. Based on this comment, the word "yearly" was replaced with "annual historical," to clarify that the erosion rate does not have to be determined yearly. The term was changed, based on this comment, from 60 years to 50 years. The 50-year term was chosen to make the rules consistent with the Texas Natural Resources Code, §33.604(b), relating to coastal erosion.

One commenter stated that because so many requirements are tied to the definition of "habitable structure" in §15.2, the General Land Office should revise §15.2 by expanding the definition of "habitable structures" to include structures that are not residences, such as "subdivision common elements," and forms of construction which are acceptable to the Federal Emergency Management Agency. The definition of "habitable structures" is intended to include only the structures which are, in fact, habitable and any attachments to habitable structures, such as porches and gazebos. In addition, the General Land Office did not propose any change to the existing definition of "habitable structures" in §15.2 when proposing the amendments to the beach/dune rules in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7798). However, the General Land Office will consider the request of this commenter in any future proposals to amend the beach/dune rules. No change was made based on this comment.

Regarding the proposed addition of a definition of "habitable structure perimeter or footprint" in §15.2, one commenter recommended that non-habitable structures be defined separately as "structures" and that non-structures such as landscaping and recreational facilities be deleted from the definition altogether. Based on this comment, the definition of "habitable structure perimeter or footprint" has been revised to clarify that non-structures and non-habitable structures (such as landscaping and recreational facilities) are not part of the "habitable structure footprint or perimeter."

A commenter suggested that the definition of "master plan" in §15.2 be revised to allow developers the flexibility to delineate "building envelopes" so that individual dune protection permits and beachfront construction certificates will not be required for each individual lot. There is no need to have permits or certificates for individual lots located within a master plan unless the application for a master plan did not include a description of all impacts to dunes, dune vegetation or public beach use and access. The purpose of a master plan is to allow a developer to address comprehensively all of the impacts to dunes, dune vegetation, and public beach use and access and to avoid applying for permits and certificates lot by lot. Based on this comment, the definition of "master plan" in §15.2 has been revised by adding the following sentence: "[i]f all impacts to dunes, dune vegetation and public beach use and access are accurately identified, local governments shall not require permits and certificates for construction on the individual lots within the master plan area."

Concerning the proposed amendment of the definition of "master plan" in §15.2, one commenter requested that "master plan" be replaced with "project development plan." The commenter stated that "the rules should be made clear that 'project development plans' are submitted for approval under authority granted by the Open Beaches Act and the Dune Protection Act and are physical development plans which are detailed in scope because they are an immediate step prior to obtaining building permits." The commenter also stated that "[c]hapter 211 of the Local Government Code grants authority to only local governments for comprehensive planning which is more related to integrating local goals, objectives and land uses with zoning and infrastructure planning." The commenter did not provide the reasoning behind changing the phrase "master plan" to "project development plan," or what would be achieved by adopting the proposed nomenclature. In considering the entire comment, it appears that the commenter is concerned that people will confuse the master plan process with other local planning processes. Regarding the authority to adopt master plans, all provisions in the beach/dune rules, local government plans, and master plans are adopted pursuant to the Open Beaches Act and the Dune Protection Act. To single out one provision as authorized by the relevant statutes is unnecessary, and may mislead readers as to the authority for the other provisions. Concerning any potential for confusion by local governments or citizens, developers and local governments have great flexibility in determining when and how to integrate each master plan into the more general local land use, zoning, and infrastructure planning process. The beach/dune program represents a small portion of a local government's responsibility when considering a development proposal, and each developer and local government may approach the process in a manner best suited to the developer and the local process. No change was made based on this comment.

One commenter requested that the definition of "master plan" in §15.2 be amended to require applicants to identify any proposed or existing retaining walls. This commenter accurately noted that the location of

retaining walls is an issue relevant to the requirements of the Open Beaches Act and the Dune Protection Act, and the definition of "master plan" has been amended as requested.

Two commenters requested that the definition of "master plan" in §15.2 be revised by deleting the joint consultation between the developer, the local government, the Office of the Attorney General and the General Land Office. One of the commenters asserted that the joint consultation was an "undue burden"; the other asserted that it was impractical because the development is the sole responsibility of the landowner. Master plans involve a voluntary process by which a developer can get preliminary review and input by the state and local governments at the earliest possible time, expediting the final approval process. The General Land Office and the other affected governmental entities are not responsible for the details of the development, rather, the governmental entities are responsible for identifying their concerns in the beginning of the process. The joint consultation process provides the developer with the necessary approvals at the beginning and saves money by avoiding unnecessary revisions to the proposal. It is not fair or practical for any developer to have to wait to get answers that are available from the outset. No change was made based on these comments.

A commenter requested revision of the definition of "material changes" in §15.2 to indicate that a material change may occur only after a permit or certificate is issued, and stated that until a permit or certificate is approved a change is merely a modification to the application. As provided in the definition of "material changes" in §15.2, material changes can either occur after the local government issues the permit or certificate or after the applicant submits an application to a local government and before the local government issues the permit or certificate. The proposed amendment to §15.3(t)(4), relating to the requirements after a material change has occurred, did not clearly conform to the definition of "material changes," nor did it address the point raised by this commenter. Therefore, in response to this comment and to more clearly conform to the definition of "material changes" in §15.2, the "material change" provision in §15.3(t)(4) has been revised to clarify that applicants must modify their applications if material changes occur after submission of an application and before issuance of a permit or certificate.

One commenter requested that the definition of "material changes" in §15.2 be revised to only include those material changes which would result in "additional" adverse effects to dunes, dune vegetation, or beach access and use. When considering whether material changes have occurred, local governments should consider additional or unanticipated adverse effects to dunes, dune vegetation, and public beach use and access which occur after a permit or certificate is issued. Based on this comment, the definition of "material changes" in §15.2 was revised by adding "additional or unanticipated."

A commenter requested that the General Land Office add a new definition of "public beach access" to §15.2 as follows: "[a] publicly dedicated easement or right-of-way for the purpose of providing legal access to the public beach." This commenter referred to local experience where trails have been cut to the public beach as a result of illegal trespass through private property. The definition of "beach access" in §15.2 provides that public beach access is available where the public has a "right" to ingress and egress. That right does not include the right to trespass, and the laws protecting private property owners from trespassers are not affected by the beach/dune rules. No change was made based on this comment.

A commenter noted that there was not a paragraph break between the definitions of "swales" and "unique flora and fauna" in §15.2. This typographical error was corrected.

### Section 15.3. Administration.

Regarding §15.3(h), a commenter requested that the state fund all surveying and mapping costs necessary to tie a dune protection line to the state plane coordinate system (SPCS). State funding issues are determined by the Legislature, and cannot be determined by rule. The majority of local governments have already established their dune protection lines, and tied the lines to the SPCS. In addition, with the help of a Natural Resource Inventory grant, the General Land Office coordinated a state and local government inventory of beach/dune resources, which included mapping the dune areas and tying to the SPCS the dune protection lines established by two local governments. The General Land Office staff is available to work with local govern-

ments in any aspect of the development and implementation of local beach/dune plans. No change was made based on this comment.

Regarding §15.3(s)(4), one commenter requested that the existing subheading of "permit and certificate application requirements" in the rules be retained, instead of replacing it with the proposed "permit applications." Section 15.3(s)(4) contains both permit and certificate application requirements; therefore, the commenter's requested change was made.

A commenter requested that §15.3(s) be revised to require local governments to submit to the state aerial photographs of proposed construction sites with a delineation of the footprint of the proposed construction to assist the state in reviewing the impact of the construction. Based on this comment, and to reflect existing practice, §15.3(s)(4)(E)(v) has been added to provide that when copies of aerial photographs are readily available, local governments shall submit them to the state as part of the permit or certificate application submission.

One commenter stated that separating the permit and certificate requirements, respectively in §15.3(s)(4)(A) and (B), is confusing and unclear and requested retention of the current organization. The commenter suggested that the provisions for differentiating between permits and certificates could all be contained in §15.3(s)(4)(A). Another commenter "welcomed" the reorganization. As adopted in 1993, the beach/dune rules combined the permit and certificate application requirements. This caused some confusion for the applicants that needed to apply for a beachfront construction certificate but not a dune protection permit (for example, where there are no dunes on a lot). In addition, there are local governments that do not have jurisdiction over both dune protection and Open Beaches issues. The reorganization of §15.3(s)(4) was proposed at the urging of local governments and affected citizens. Now, the dune protection permit application requirements are contained in §15.3(s)(4)(A), the beachfront construction certificate application requirements are contained in §15.3(s)(4)(B), the overlapping requirements for both permit and certificate applications are contained in §15.3(s)(4)(C) and (D), and the items that local governments are required to submit to the state for all applications are identified in §15.3(s)(4)(E). While there may be some initial confusion due to a change in the status quo, the benefit of the reorganization is a clearer and less confusing structure for both applicants and local governments. No change was made based on this comment.

Regarding §15.3(s)(4)(A)(iii), one commenter stated that requiring applicants to identify the location of the dune protection line with respect to the location of the proposed construction is irrelevant because it makes little difference in the application of regulations. The commenter also stated that if an application is submitted to the state for comment, that is a pretty clear indication that the proposed construction is within the dune protection area. In some cases, the dune protection line runs through a particular tract of land, meaning that certain portions of the proposed construction would not be subject to state review under the Dune Protection Act. The relevance of identifying the location of the dune protection line varies, depending on the jurisdiction and the tract in question. For example, those local governments that have established their dune protection lines along a public road may not be concerned with construction that is proposed both within and landward of the dune protection area; however, it is quite simple to note on the pertinent application that the dune protection line is located along the public road. No change was made based on this comment.

One commenter supported the proposed deletion of §15.3(s)(4)(A)(xiii) and §15.6(f)(4), which required that applicants for eroding area permit applications submit proof of financial assurance for building relocation. No change was made based on this comment.

Section 15.3(s)(4)(A)(xiv) was amended by adding the words "site plan" to address the concerns of two commenters regarding the site plan requirement in proposed §15.3(s)(4)(D)(i), which was deleted based on comments. The summary of those comments and the General Land Office's response regarding the revision to §15.3(s)(4)(A)(xiv) based on that comment are provided in this preamble with the other comments received on §15.3(s)(4)(D).

Referring to §15.3(s)(4)(A)(xiv)(VI), one commenter requested the retention of the requirement that applicants submit information on man-made mounds and restored dunes. This subclause was not changed or deleted in the proposed amendments published in the September 26, 1996, issue of the *Texas Register* (20 TexReg 7798). No change was made based on this comment.

A commenter recommended modification of §15.3(s)(4)(B)(iv), which requires permit applicants to submit a certification that the project will not adversely affect public beach access or "exacerbate erosion." The commenter noted that an individual permit applicant can certify to the effects on public beach access of building a structure or several structures; however, erosion impacts are more difficult to project and are the task of the local permitting authority. Section 15.3(s)(4)(B)(iv) requires an opinion by the applicant, not a certification, regarding the impacts of the proposed construction. The local government and the state are the appropriate entities to determine whether erosion will, in fact, be exacerbated. No change was made based on this comment.

One commenter requested that §15.3(s)(4)(B)(vii) be revised to keep the requirement that applicants submit photographs that show location of dunes because such information is pertinent to the consideration of Open Beaches issues. Photographs are an essential element of the permit and certificate applications for the purpose of identifying beach/dune issues; therefore, based on this comment, §15.3(s)(4)(B)(vii) has been revised to require that if the tract has dunes, photographs of the dunes must also be included in the application.

Section 15.3(s)(4)(B)(viii) was revised by adding the words "site plan" to address the concerns of two commenters regarding the site plan requirement in §15.3(s)(4)(D)(i). The summary of those comments and the General Land Office's response regarding the revision to §15.3(s)(4)(B)(viii) based on that comment are provided in this preamble with the other comments received on §15.3(s)(4)(D).

One commenter proposed revising §15.3(s)(4)(B)(viii)(III) and (IV) to require applicants to identify "the location of the proposed habitable structure perimeter or footprint, or other proposed..." Section 15.3(s)(4)(B)(viii)(III) and (IV) respectively require that applicants identify the location of proposed construction and proposed and existing structures. These phrases are broader than and include the "proposed habitable structure perimeter or footprint"; therefore, no change was made based on this comment.

A commenter requested that §15.3(s)(4)(B)(viii)(III) be revised to include the seaward limit, in addition to the landward limit of construction. Section 15.3(s)(4)(B)(viii)(III) requires applicants to identify the location of the proposed construction, which includes the seaward and landward limits of construction. The phrase "landward limits" modifies the phrase "beachfront construction area." The Open Beaches Act, Texas Natural Resources Code, §61.011(d) and §61.015(c), requires local governments to regulate "construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever distance is greater, that affects or may affect public access to and use of public beaches." Some local governments have established, with the state's approval, a landward limit for the regulation of beachfront construction. This approach is warranted in areas where, for example, literal interpretation of the distances provided in the statute would result in the regulation of "beachfront" construction up to Interstate 10. No change was made based on this comment.

A commenter asserted that the requirement that an applicant identify "the location of the proposed construction" in §15.3(s)(4)(B)(viii)(III), duplicated the requirement that an applicant identify "the location of proposed and existing structures" in §15.3(s)(4)(B)(viii)(IV). The commenter requested elimination of the duplication. The terms "construction" and "structure" are not synonyms, and different definitions are provided for the terms in §15.2. No change was made based on this comment.

A commenter requested that §15.3(s)(4)(B)(viii)(III) be revised by replacing the term "mean high water" with "mean high tide." Because "mean high tide" is the terminology used in the Open Beaches Act, Texas Natural Resources Code, §61.011(d), the requested change was made.

Regarding §15.3(s)(4)(B)(viii)(III), one commenter questioned the relevance of requiring that applicants identify the location of the mean high water line, the dune protection line, the line of vegetation, and the limit of the beachfront construction area. These various physical benchmarks are essential to determining the location of the construction with respect to: the water's edge; the dune protection area; the public beach; and the area protected by the Open Beaches Act. Local

governments submit permit and certificate applications to the state, as required by law, and the General Land Office and the Office of the Attorney General use these benchmarks as an integral part of the state review. No change was made based on this comment.

A commenter requested deletion of the requirement that applicants identify the location of proposed driveways from §15.3(s)(4)(B)(viii)(V) because private driveways are not a public beach access issue. The Open Beaches Act, Texas Natural Resources Code, §61.011(d), covers beachfront construction, in addition to beach access. Construction of driveways within the area subject to the Open Beaches Act is beachfront construction. No change was made based on this comment.

Two commenters requested the deletion of the requirement that applicants identify proposed landscaping activities within 200 feet of the line of vegetation from §15.3(s)(4)(B)(viii)(VI). One commenter asserted that the requirement is ambiguous, not in the current rules, and that the amendment does not include any justification for this requirement. Another commenter asserted that the requirement should be deleted because it is not a beach access issue. This provision only applies to the area within 200 feet landward of the line of vegetation. Some landscaping can adversely affect public beach use and access where, for example, fences, sand fences, yucca plants, and other types of vegetation with sharp foliage are used. Landscaping activities can also modify or destroy the natural vegetation line, and local governments should have notice of such activities in the application. The Open Beaches Act, Texas Natural Resources Code, §61.011(d), covers beachfront construction such as landscaping, in addition to beach access. Therefore, identification of proposed landscaping must be included in a certificate application. No change was made based on these comments.

One commenter requested that §15.3(s)(4)(B)(viii)(VII) be revised to geographically limit the required information to 100 feet of the common property line because the provision should be limited to some distance from the adjoining property line. Because the General Land Office is mainly concerned with the area near the common property line, the requested revision was made.

Regarding §15.3(s)(4)(C)(i), a commenter recommended that plat and survey information be limited to the affected site and not the whole subdivision if it happens to be owned by the same property owner. This commenter also requested deletion of the distinction between subdivision tracts and other tracts. Subdivision owners and developers have plat and survey information readily available as part of the local and state process of reviewing construction. The distinction between subdivision tracts and other tracts of land is important because a single permit and/or certificate cannot be used to authorize an entire subdivision. A subdivision developer or owner may choose to either have the subdivision approved by applying for a lot-by-lot permit and certificate or may have the entire subdivision approved at one time by using the master plan process. No change was made based on this comment.

Two commenters recommended that §15.3(s)(4)(C)(i) be revised by replacing the term "plat" with "survey." Another commenter requested that the proposed language be replaced with the following: "(i) If the affected area is located on one or more lots within the platted subdivision, provide a copy of the recorded plat, if the affected area is located within an un-platted tract, provide a survey of the tract." Based on these comments, the clause was amended to allow an applicant to submit a survey if the affected area is not platted.

One commenter requested that "or less impairment of beach access" in §15.3(s)(4)(C)(iii) be replaced with "or, in the case of proposed dune walkovers, less of an encroachment on the public beach." The commenter stated that it is important to guard against any statement that could suggest a relaxing of the prohibition of encroachments on the public beach, and that the only legal structure on the beach is a dune walkover restricted to the most landward point possible. The beach/dune rules do not authorize any encroachments, no matter how minimal, on the public beach; therefore §15.3(s)(4)(C)(iii) is limited to impairment of beach access. Dune walkovers may extend to the most landward point of the public beach. Beach access may be impaired, but only if equivalent or better access is provided elsewhere. No change was made based on this comment.

Stating that the provision is overly restrictive and demanding of an applicant, a commenter requested deletion of §15.3(s)(4)(C)(iii), which requires applicants proposing large-scale construction to identify alter-

natives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access. The commenter failed to state the reasons why the alternatives analysis required for large-scale construction is overly restrictive and burdensome; however, all that is required from an applicant is a narrative identification (supported by graphic material, if necessary), of what construction locations and methods would have fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access. No change was made based on this comment.

A commenter requested deletion of proposed §15.3(s)(4)(D)(i), which requires applicants to submit a site plan, if one is readily available, and stated that the clause duplicated requirements contained in §15.3(s)(4)(C). The subparagraphs are not duplicative because §15.3(s)(4)(C) applies to large-scale construction, and §15.3(s)(4)(D) applies to all construction. Deleting §15.3(s)(4)(D)(i) could result in an information gap for small-scale construction. However, to address the concerns of this commenter, and those expressed by another commenter in the next comment summary, §15.3(s)(4)(A)(xiv) and §15.3(s)(4)(B)(viii) were amended to give applicants the flexibility of submitting a map, plat or site plan to identify the listed information; it is the applicant's choice, a site plan is not required. In addition, §15.3(s)(4)(D)(i) was deleted and the clauses were renumbered accordingly.

A commenter requested deletion of proposed §15.3(s)(4)(D)(i) and (ii) on the grounds that §15.3(s)(4)(A)(i)-(xiv) and §15.3(s)(4)(B)(i)-(viii) already satisfy the requirements of proposed §15.3(s)(4)(D)(i) and (ii). Based on this and the previous comment, proposed §15.3(s)(4)(D)(i) and (ii) were deleted and the clauses renumbered accordingly because, respectively, most of the elements of a site plan are required pursuant §15.3(s)(4)(B) and (C) and topographic elevations of existing contours are required pursuant to §15.3(s)(4)(A)(ix).

Section 15.3(s)(4)(D)(iii) and (iv) were renumbered and the provisions in those clauses are now provided in §15.3(s)(4)(D)(i) and (ii). The renumbering of 15.3(s)(4)(D)(iii) and (iv), now §15.3(s)(4)(D)(i) and (ii), is due to the deletion of previous §15.3(s)(4)(D)(i) and (ii) in response to comments. The two previous paragraphs of this preamble contain a summary of those comments and the General Land Office's response.

One commenter stated that §15.3(s)(4)(D)(iii), now §15.3(s)(4)(D)(i), is irrelevant because the General Land Office has already adopted the erosion rates prepared by the University of Texas at Austin Bureau of Economic Geology, and that §15.3(s)(4)(F) already establishes the General Land Office as the contact for erosion rate data and technical information. The purpose of §15.3(s)(4)(D)(iii), now §15.3(s)(4)(D)(i), is to have the applicant identify, if the information is readily available, the erosion data for the area where the construction is proposed. This information becomes part of the administrative record of the General Land Office's comments for the pertinent application. No change was made based on this comment.

Regarding §15.3(s)(4)(E)(i), one commenter suggested an amendment to require local governments to submit the community's complete flood insurance rate map to the General Land Office only once instead of submitting multiple copies of the most recent flood insurance map. The purpose of §15.3(s)(4)(E)(i) is to have the local government identify the location of the construction site on the relevant portion of the flood insurance rate map. This information is a necessary part of the administrative record of the General Land Office's comments for the pertinent application, and the accuracy of the application and supporting materials should not be compromised by the General Land Office adding material to the application in Austin. No change was made based on this comment.

In §15.3(s)(4)(F), concerning dissemination of erosion data and other technical information, one commenter suggested deleting "may" and replacing it with "shall." The General Land Office will continue to assist local governments in every way possible. Based on this comment, §15.3(s)(4)(F) has been revised to provide that the General Land Office shall provide available erosion data and other technical information upon request.

Section 15.3(t)(4) was amended to address the concerns of a commenter regarding the definition of "material changes" in §15.2 and to ensure that §15.3(t)(4) conforms to that definition with respect to

permit and certificate applications. The summary of that comment and the General Land Office's response regarding the revision to §15.3(t)(4) based on that comment are provided in this preamble in alphabetical order with the other comments received on the definitions in §15.2.

#### Section 15.4. Dune Protection Standards.

Regarding §15.4(c)(3), one commenter asked for further definition of the word "unacceptable" as it relates to mineralogy or grain size. The term "unacceptable" is used in comparison to the mineralogy and grain size of the sediment existing on the site. The acceptability of sediment is primarily a local government decision, which the state will review as part of the statutorily authorized permit review process. No change was made based on this comment.

One commenter requested that §15.4(c)(8) be eliminated or restricted in applicability to eroding areas only. The commenter stated that the impact of this rule has been to encourage maximum development of the lot by the habitable structure, with a resulting reduction in open space on-site. Another commenter requested that the subsection be expanded to authorize a standard double car driveway and sidewalk. Section 15.4(c)(8) authorizes the construction of impervious surfaces under and associated with habitable structures. The allowable amount of impervious surface is based on a percentage of the size of the habitable structure. There is nothing in the rules to prevent an applicant from enlarging the size of a proposed habitable structure to maximize the amount of impervious surface on a particular tract of land. This subsection is not limited to eroding areas because it addresses concerns related to soil permeability, the water table, the sediment budget, and protection from storm surge. No change was made based on these comments.

Commenting on §15.4(c)(8), a commenter requested that consideration be given to allowing the use of wood decking as an acceptable approach for sidewalks or patio areas, provided that wood deck is designed to allow for the transmission of stormwater. Under the existing rules and the amendments, local governments may allow permittees to use wood decking, provided that it is constructed so that water may pass through the deck (between the planks). No change was made based on this comment.

A commenter suggested that as §15.4(f) and §15.4(f)(1) and (2) are written, the mitigation sequence is used after it is determined that the proposed construction will not weaken or damage dunes or dune vegetation, however, if it was already determined that the proposed construction will not weaken or damage dunes or dune vegetation, there are no adverse impacts to mitigate. Regarding §15.4(f)(1), the commenter stated that if the activity will not materially weaken dunes or dune vegetation, then the proposed activity is not an adverse impact. The Dune Protection Act prohibits material weakening of dunes and dune vegetation, and requires permits for other, lesser types of damage to dunes and dune vegetation. Therefore, permits are required for impacts to dunes and dune vegetation which do not rise to the level of material weakening of the dunes and dune vegetation. No change was made based on this comment.

Regarding §15.4(f)(1)(B) and §15.4(f)(2)(B)(iii), one commenter questioned the impact of these regulations on local government actions in which determinations are made or policies adopted which provide for no private access to the public beach and access from these properties is restricted to public access points only. Such determinations are appropriately made at the local government level. The beach/dune rules would not impact a local government decision to require residents to use public accessways. No change was made based on this comment.

One commenter asserted that §15.4(f)(3) and (4) appear to be the only paragraphs that are properly written to reflect that weakening or damage to dunes and dune vegetation are the adverse effects being addressed. No change was made based on this comment.

#### Section 15.5. Beachfront Construction Standards.

A commenter asserted that §15.5 focuses on beachfront construction standards, which are primarily intended to address the effects of proposed activities on beach access, and that paragraph (b)(3) is not part of this section in the current rules and should not be included in the amendment because it has nothing to do with beach access. This commenter also stated that the issue of impervious surfaces is already

addressed in §15.4(c)(8). Impervious surfaces are appropriately considered pursuant to the Open Beaches Act, Texas Natural Resources Code, §61.011(d), because they impact natural drainage patterns, the sediment budget, soil permeability, the water table, and protection from storm surge. When water comes in contact with impervious surfaces, erosion is exacerbated by the scouring of the sediment under and around the impervious surface. The scope of the Open Beaches Act, §61.011(d), is not limited to beach access. No change was made based on this comment.

An editorial change was made to §15.5(b)(3) to clarify that the use of the word "or" means that impervious surfaces cannot be constructed in the area within 200 feet landward of the line of vegetation or seaward of the eroding area boundary by adding the words "whichever distance is greater."

#### Section 15.6. Concurrent Dune Protection and Beachfront Construction Standards.

Citing §15.6(c) and §15.7(b), one commenter stated that a policy based upon §15.7(b) is the appropriate approach. The commenter requested that §15.6(c) be revised to provide that erosion response structures are restricted from the area within 200 feet of the vegetation line, and retaining walls are permitted within that area, especially in accreting areas. No amendments to §15.6(c) or §15.7(b) were proposed; however, it should be noted that §15.7(b) relates to erosion response through the use of coastal and shore protection projects, such as beach nourishment, and §15.6(c) authorizes the construction of retaining walls on private property. No change was made based on this comment.

Regarding §15.6(f)(3), a commenter stated that the proposed amendment appears to reverse the existing prohibition of concrete slabs in eroding areas. The commenter noted that, as defined in §15.2, "eroding areas" erode at a rate of at least two feet per year, and noted that concrete slabs would likely become obstructions on the public beach. The commenter suggested that if this paragraph is amended to allow for construction of slabs in eroding areas, the applicant should be required to post a bond sufficient to provide for removal of the slab and an applicant not wishing to post a bond would still have the option of placing pervious brick, crushed limestone, or gravel surfaces under the house. The commenter's point is illustrated by looking at some of Texas' eroding beaches where there is now debris and remnants of abandoned houses and infrastructure. The federal, state and local governments and owners of property landward of eroding beaches are currently trying to address the problem of Texas' eroding beaches. As adopted in 1993, the beach/dune rules, §15.6(f)(4), required financial assurance for construction in eroding areas, and local governments and private property owners clearly told the General Land Office that the financial assurance requirement would cause severe fiscal impacts to the barrier island developers. Based on those concerns, the General Land Office proposed deletion of the financial assurance requirement in the September 26, 1995, proposed amendments to this subsection, and a new financial assurance requirement has not been added based on this comment. However, in response to this comment, and to conform to existing §15.4(c)(8), relating to the application of dune protection standards to construction of impervious surfaces, and proposed §15.5(b)(3), relating to the application of beachfront construction standards to construction of impervious surfaces, §15.6(f)(3) has been revised to provide that, within eroding areas, local governments shall not authorize construction of impervious surfaces within that local government's eroding area boundary or within 200 feet of the line of vegetation, whichever distance is greater. The adoption of amended §15.6(f)(3), as revised based on this comment and as revised to conform to §15.4(c)(8) and §15.5(b)(3), authorizes the construction of impervious surfaces landward of eroding beaches; however, these impervious surfaces will be located at a distance from the beach which is sufficient to protect the public beach and will give developers and local governments the flexibility they desire in proposing and authorizing beachfront construction.

A commenter requested that the amendment to §15.6(f)(3), which allows impermeable surfaces within the footprint of the habitable structure be revised to allow impermeable surfaces within the footprint of elevated portions of a structure plus a standard single car driveway and sidewalk. The General Land Office proposed eliminating the prohibition on slabs and other impervious surfaces adjacent to eroding beaches. This amount is the maximum, reasonable proportion necessary for property owners and local governments to have more flexibility in

undertaking and authorizing beachfront construction next to Texas' eroding beaches. No change was made based on this comment.

One commenter requested that §15.6(f)(3) be revised to include pavers to conform to the requirements of §15.4(c)(8) and §15.5(b)(3). The phrase "brick pavers" was added to §15.6(f)(3) based on this comment.

One commenter requested the deletion of §15.6(f)(4), and stated that the National Flood Insurance Program (NFIP) no longer allows the enclosure of garages or storage areas below the Base Flood Elevation (BFE), and that if the subject property is filled to an elevation exceeding the BFE, garage and storage areas can be enclosed with solid walls and without any restriction in square footage. The state beach/dune program and the NFIP have aspects that overlap, but the programs are not and were not meant to be identical. No change was made based on this comment.

A commenter stated that the spill response amendments in §15.6(h) have not been proposed in a manner that will provide the public with adequate notice. The commenter noted that the General Land Office proposed spill response rules and the General Land Office natural resource damages rules (NRDA) provide for notification to the General Land Office when there is an oil spill within the beach/dune system and coordination of response and NRDA rules rather than indirectly through these proposed amendments. Also noted was that persons with an interest in spill response and NRDA issues will not, in all likelihood, have contemplated that supplemental spill response and NRDA rules would be proposed as amendments to the beach/dune rules and therefore, will not have had a reasonable opportunity to scrutinize these proposed rules. Furthermore, the commenter stated that by interspersing spill response requirements throughout the General Land Office's beach/dune rules rather than maintaining a single set of regulations, the General Land Office may increase the burden of complying for industry and spill responders. Subsection 15.6(h) was proposed in accordance with the public notice requirements of the Texas Administrative Procedure Act (Texas Government Code, §§2001.001 et seq.). The fact that some interested persons may not have reviewed the proposed rule is not a basis for placing the rule elsewhere. Section 15.6 is appropriately part of the beach/dune rules because it is primarily concerned with maintaining the integrity of the beach/dune system by minimizing the loss of sand during emergency response. Emergency spill responders are required to comply with many other laws and regulations in addition to oil spill rules. For example, state and federal rules related to waste disposal, water quality, air quality and health and safety plans are just some of the rules applicable to oil spill response. These regulations are all authorized by separate statutes. There is no legal basis for consolidating all rules somewhat related to emergency spill response actions into one section of the Texas Administrative Code. Further, such a suggestion is impracticable since several state agencies have jurisdiction over emergency response to spills of oil and hazardous substances. The rule proposed herein is authorized by the Open Beaches Act and the Dune Protection Act, and not by the Oil Spill Prevention and Response Act (OSPRA). Thus, the rules are properly promulgated under this section of the Texas Administrative Code. No change was made based on this comment.

One commenter stated that since OSPRA explicitly provides for the adoption of spill response rules and that the statutes under which these rule amendments were proposed do not, it is questionable whether §15.6(h) is supported by the necessary statutory authority. Subsection 15.6(h), like numerous other rules, is derived from one of many statutes regulating activities in certain geographic and physical areas. There are many state and federal regulations related to water quality, air quality, solid waste and emergency response which impact emergency spill response actions. For example, such regulations govern activities such as cleanup techniques in wetlands, use of dispersants, burning of spilled oil, and response personnel health and safety. Each of these regulations is promulgated pursuant to a statute other than one designed primarily to address oil spills. Similarly these rules, concerned primarily with maintaining the sand budget in the beach/dune system, are appropriately within the scope of the statutes governing activities on beaches and dunes. No change was made based on this comment.

The same commenter, based on the previous comment, recommended that the proposed §15.6(h) not be adopted and that in its place, the General Land Office adopt the following language: "(h) Emergency response to oil or hazardous substance spills. Responses to spills of oil

or hazardous substances within the beach/dune system shall be consistent with Chapter 19 of this title, relating to Oil Spill Prevention and Response, and with Chapter 20 of this title, relating to Natural Resource Damage Assessments. The General Land Office Oil Spill Response Team shall contact the General Land Office Resource Management Program regarding the proposed cleanup and disposal methods and the conservation of sand within the beach/dune system." If the recommended change is not made, the commenter also offered the following specific changes to the proposed rule, "these rules are intended to provide for the conservation of sand during spill response activities within the beach/dune system." Oil spill response personnel are required to comply with a variety of laws and regulations in addition to those promulgated by the General Land Office pursuant to OSPRA. Current rules at Chapters 19 and 20 of this title do not address specific methods for responding to oil spills in particular types of environments. The on-scene-coordinator is the person charged with and responsible for all decisions related to spill response. The state natural resource trustees do, however, participate in spill response decisions regarding environmentally sensitive areas, like beaches and dunes, through the incident command system. The provisions in §15.6(h), appropriately contained in the beach/dune rules, are designed to ensure that damage to beaches and dunes is minimized and that the on-scene-coordinator has guidance from the General Land Office. No change was made based on this comment.

One commenter stated that the title of §15.6(h) refers to "emergency response to oil or hazardous substance spills;" however, the proposed amendments do not define what constitutes an emergency response. The commenter requested the following definition of "emergency response" be added to subsection (h): "For purposes of this subsection, an emergency response is required when there is an actual or threatened unauthorized discharge of a harmful quantity of oil or a hazardous substance which is or may be spilled, leaked, pumped, poured, emitted, or dumped into the beach/dune system." The title of the subsection gives sufficient notice to spill responders and to the public of the purpose of the rule. The phrase "emergency response to oil or hazardous substances spills" is clear and there is a widespread common understanding about the meaning of the words. A definition is not required to give notice to affected persons. Further, the commenter's recommended definition is not a definition of "emergency response," but appears to be an attempt to delineate when an emergency response is required, a decision clearly better left to those persons trained in and responsible for emergency spill response. No change was made based on this comment.

A commenter requested addition of the following sentence to §15.6(h) to clarify that the rules will only operate prospectively and that the rules will not apply to pre-existing or historical contamination: "[t]his subsection shall not apply to the remediation of sites with pre-existing or historical contamination." The proposed subsection is applicable in the event of an emergency response to a release of oil or of a hazardous substance. It is also applicable in the event that a person is required to perform remedial work in the beach/dune system for past spills or other historical contamination. Under the Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code Annotated, §§9601 et seq., a person required to perform remediation due to a past release of a hazardous substance is required to comply with all applicable, relevant and appropriate requirements of law. Further, persons performing restoration activities conducted pursuant to natural resource damage assessments are also required to comply with applicable, relevant, and appropriate requirements of law. The beach/dune rules, including this proposed subsection, are applicable, relevant, and appropriate requirements of law in such circumstances. No change was made based on this comment.

One commenter requested deletion of §15.6(h)(1). Or, in the alternative, that the paragraph be changed to require a person from the General Land Office Division of Oil Spill Prevention and Response to notify the Resource Management Program since the General Land Office receives notice of spills. The General Land Office receives spill notifications via the Department of Public Safety, which operates the 1-800-832-8224 spill reporting phone number. The General Land Office, the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission, agencies with emergency spill response jurisdiction, receive a copy of these notifications. However, because neither the Railroad Commission of Texas nor the Texas Natural Resource Conservation Commission require persons responsible for other oil or hazardous substances spills to report them to the

spill reporting number, the General Land Office is not notified of all spills. Therefore, this suggestion, under the present spill reporting scheme, would not result in notice to the Resource Management Program.

One commenter stated that the meaning of the term "Incident Command System" as used in §15.6(h)(2) is unclear because these rules neither define nor reference an "Incident Command System," and that this definition should be clarified and defined or deleted from paragraph (2) of the subsection. This proposed subsection applies to state on-scene-coordinators, who are well-versed in incident command systems. There are several acceptable types of incident command systems and it is within the discretion of the on-scene-coordinator to choose the most appropriate one. A definition is not necessary in these rules, which deal primarily with preservation of sand and beach access and use in the beach/dune system and not with the details of emergency spill response organization. No change was made based on this comment.

One commenter stated that §15.6(h)(2) and §15.6(h)(2)(B)(i) are unnecessary and inappropriate because existing rules for spill response and natural resource damage assessments describe the role of the natural resource trustees in spill response activities. The commenter also suggested deletion of the requirement for consultation with the natural resource trustees in paragraph (2) and the requirement in clause (2)(B)(i) that natural resource trustees pre-approve the construction of man-made mounds, or new dunes. The General Land Office may rely upon the expertise of the state natural resource trustee agencies, the Texas Natural Resource Conservation Commission, the Texas Parks and Wildlife Department and the General Land Office, have particular expertise which is relevant to emergency spill response activities impacting beaches and dunes. The natural resource trustees, pursuant to Chapter 20 of this title and the National Contingency Plan, actively participate in spill response decisions by evaluating the likelihood of increasing the injury to impacted natural resources from various spill response techniques. Depth of excavation and sand removal are the types of decisions about which trustees regularly advise on-scene-coordinators during spill response. The delineation of this particular role does not limit the role of the trustees nor does it add to their responsibilities. Regarding the construction of man-made mounds, it is also appropriate to utilize the expertise of the trustees, who are particularly well-versed in analyzing the functions of and services provided by natural resources, such as dunes. The trustees also have expertise in the design of restoration projects which would be especially useful in dune reconstruction. No change was made based on this comment.

One commenter stated that §15.6(h)(2)(B)(i) requires that "only material that does not pose a threat to human health and the environment may remain in the beach/dune system" and asserted that the rules do not indicate how such a determination will be made or who will be responsible for making such a determination. The commenter recommended that this provision be revised to provide that a site must be remediated to a level designated by the state agency with appropriate jurisdiction. The General Land Office assumes that all applicable state statutory and regulatory requirements for remediation and for leaving contaminated materials on the beach or in the dunes are protective of human health and the environment. There are readily available sampling and chemical testing procedures to analyze materials for the presence of substances at levels injurious to human health and the environment. Emergency spill responders, remedial managers, and natural resource trustees are all familiar with the scientific techniques for making such a determination. The determination is made by the on-scene-coordinator, the remedial manager or the natural resource trustees. To the extent that current or future state regulations require additional safeguards, those would also be applicable. This subsection does not impact the current regulations or add to current legal requirements. No change was made based on this comment.

A commenter requested that §15.6(h)(2)(B)(iii) be revised to read as follows: "[d]isposal of waste must be in compliance with the applicable laws and regulations of the Railroad Commission of Texas, the Texas Natural Resource Conservation Commission, and the United States Environmental Protection Agency." The subsection was revised based on this comment, although the exact language suggested by the commenter was not used. There are numerous agencies responsible for the disposal of waste in Texas, and because future legislation may



expand or change the entities responsible for waste disposal, this subsection was revised by referring to "applicable state and federal laws and regulations." This more general statement obviates the need to amend the rule due to future changes in jurisdiction over waste disposal.

#### Section 15.7. Local Government Management of the Public Beach.

One commenter recommended elimination of §15.7(e)(6)(D), asserting that it contradicts the proposed changes in §15.7(l), and that local government efforts to restore dunes are adversely impacted by the subsections. Neither deletion of nor amendments to §15.7(e)(6)(D) were proposed; however, clarification of the interplay between the two subsections is warranted in response to this comment. Section 15.7(e)(6)(D) authorizes local governments to use certain dune restoration methods, one of which is using sand obtained from accreting beaches, as approved by local governments and monitored for adverse impacts to the beach/dune system. Section 15.7(l), which was proposed for amendment, limits beach maintenance activities to those which do not materially weaken dunes or dune vegetation or reduce the protective functions of the beach, and requires that all sand moved or redistributed due to beach maintenance shall be returned to the area between the line of vegetation and mean high tide. Dune restoration is not an appropriate reason to scrape beaches, rather, when it is necessary to scrape accreting beaches as part of state-approved local government beach management practices, such sand may be used for dune restoration. It is commonly accepted in the scientific community that scraping beaches is detrimental to the maintenance of the beach profile, the sediment budget and can exacerbate erosion by lowering the beach elevation, even if the sand is used for dune restoration. That is why, in §15.7(l), sand scraped from non-accreting beaches must be placed between mean high tide and the line of vegetation. No change was made based on this comment.

A commenter noted that the scientific research projects authorized in §15.7(f) could involve encroachments on the public beach, and requested amendments to the subsection which would require prior approval by the Office of the Attorney General in addition to the General Land Office. Because both state agencies have jurisdiction over Texas' public beaches, the revision suggested by this commenter was made.

One commenter suggested combining §15.7(g)(3)(B) with §15.7(g)(3). The commenter also stated that §15.7(f)(1)(A) should be deleted because it duplicates §15.7(g)(3)(A). Although proposed §15.7(g)(3) and §15.7(g)(3)(B) both discuss the landward migration of the public beach, §15.7(g)(3) applies to local governments and §15.7(g)(3)(B) to individuals. Regarding §15.7(f)(A), the subparagraph was proposed for deletion and renumbering, and is now located at §15.7(g)(3)(A). No change was made based on this comment.

A commenter requested deletion of §15.7(l), relating to the requirements that beach maintenance activities must not significantly redistribute sand, and that sand obtained during beach maintenance activities must be returned to the area between the line of vegetation and mean high tide. The commenter stated that the policy would have several negative impacts on beach maintenance practices and public safety and that it should not apply to all areas on the Texas coast as conditions vary in each area. The requirement that beach maintenance activities cannot result in the significant redistribution of sand is an existing provision under which local governments have operated since the beach/dune rules were adopted in 1993, with no negative impacts on beach maintenance practices or public safety. The requirement that local governments place any sand (gathered during beach maintenance activities) between the line of vegetation and mean high tide is new. The reason for this amendment is that §15.7(l), previously §15.7(k), allowed placement of sand anywhere seaward of the dune protection line or within critical dune areas. It was not sufficiently clear that the beach/dune rules do not authorize beach management practices which alter the line of vegetation, significantly alter the beach profile, or cause damage to dunes and dune vegetation, all of which lead to the eventual erosion of the public beach and the local tourist economy. However, it should be noted that even with the amendment to §15.7(l), local governments still retain flexibility regarding beach maintenance and ensuring the health, safety and welfare of the public. No change was made based on this comment.

#### Section 15.8. Beach User Fees.

The General Land Office received no comments on this section.

#### Section 15.10. General Provisions.

Regarding "grandfathered plans" in §15.10(j), one commenter recommended that "beach access plans certified prior to the effective date" be modified to read "certified on or prior to." This commenter also recommended deletion of the second sentence of the subsection in its entirety. The first revision requested by this commenter was made, as suggested. The second was not, as local governments and individuals are required to comply with the Open Beaches Act, the Dune Protection Act, and the rules promulgated thereunder.

#### General Comments.

One commenter asserted that the rules were defective because they do not allow local governments to establish a variance procedure. There is at least one local government that has used the master plan process authorized by the beach/dune rules to allow individual developers to "vary," with certain conditions, from some requirements of the beach/dune rules. That local government offered scientific and legal information to support the use of a master plan, and the master plan was certified by the General Land Office. Therefore, there is a process currently available to local governments which ensures flexibility on the local level while ensuring that the statutory mandates of protecting dunes and preserving and enhancing public beach use and access are met. No change was made based on this comment.

Referring to references in the proposed amendments to the "line of vegetation" or the "natural line of vegetation," one commenter stated that the General Land Office has accepted only those vegetation lines mapped by the Attorney General's Office, but that the Attorney General's Office never has designated an official vegetation line. The commenter suggested that the line of vegetation be substituted by "contour of mean low tide" as it is an established and identifiable datum by the National Oceanic and Atmospheric Administration and that such an approach will not compromise the use of the line of vegetation as a defined boundary of the public beach. The contour of mean low tide changes daily, and the location varies depending on the day that the survey was conducted. A survey is much more expensive than identifying the line of vegetation. In addition, the General Land Office cannot require local governments to apply all of the provisions of the beach/dune rules landward of mean low tide. The line of vegetation is used as a benchmark because it is the most seaward point where the portions of the rules relating to beachfront construction rules apply. Beachfront construction is not authorized seaward of the line of vegetation because that would be an encroachment. Seaward of the line of vegetation, the rules that apply are those that pertain to public beach use and access, beach management practices, and protection of coppice mounds. No change was made based on this comment.

One commenter identified the location of the Galveston County dune protection line and stated that it is consistent with the County's current Federal Emergency Management Agency (FEMA) floodplain regulation. No change was made based on this comment.

One commenter stated that walls should be allowed below the footprint of a structure in accordance with Galveston County's current FEMA floodplain regulations. The beach/dune rules allow breakaway walls, consistent with FEMA standards, below the footprint of a habitable structure. In addition, it should be noted that the state beach/dune program and the NFIP have aspects that overlap, but the programs are designed to address concerns in addition to the concerns that are common to both programs. No change was made based on this comment.

One commenter asserted that "[n]either the existing rules, nor the proposed amendments, discuss how a local government might later go about amending their Dune Protection and Beach Access Plan once it has been certified by the state... and that you would certainly expect the rules to spell this out." This process is described at the end of §15.3(e) in the existing rules. The General Land Office did not propose amendments to §15.3(e), and no change was made based on this comment.

The groups and associations that submitted comments for the amendments as proposed are as follows. Section 15.2: Nueces County.

The groups and associations that submitted comments against the amendments as proposed (e.g., commenters that recommended changes to the amendments) are as follows. Section 15.2: City of Corpus Christi; Mitchell Energy & Development Corporation; Town of South Padre Island; and Urban Engineering. Section 15.3: City of Corpus Christi; County of Galveston; Mitchell Energy & Development Corporation; Office of the Attorney General; Town of South Padre Island; and Urban Engineering. Section 15.4: Town of South Padre Island. Section 15.5: Town of South Padre Island. Section 15.6: County of Galveston; Office of the Attorney General; and the Railroad Commission of Texas. Section 15.7: City of Corpus Christi; Office of the Attorney General; Nueces County; and Town of South Padre Island. Section 15.10: City of Corpus Christi.

The rules are adopted under the Texas Natural Resources Code, §61.011(d) and §63.121, which provides the General Land Office with the authority to adopt rules for the protection of dunes and dune vegetation and the preservation and enhancement of Texas' public beaches; the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion; and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

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

**Affect**—As used in this subchapter regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

**Amenities**—Any nonhabitable major structure including swimming pools, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

**Applicant**—Any person applying to a local government for a permit and/or certificate for any construction or development plan.

**Backdunes**—The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the foredunes and the foredune ridge have been destroyed by natural or human activities.

**Beach access**—The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

**Beach/Dune Rules**—31 TAC, §§15.1-15.10.

**Beach/dune system**—The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

**Beachfront construction certificate or certificate**—The document issued by a local government that certifies that the proposed construction either is consistent with the local government's dune protection and beach access plan or is inconsistent with the local government's dune protection and beach access plan. In the latter case, the local government must specify how the construction is inconsistent with the plan, as required by the Open Beaches Act, §61.015.

**Beach maintenance**—The cleaning or removal of debris from the beach by handpicking, raking, or mechanical means.

**Beach profile**—The shape and elevation of the beach as determined by surveying a cross section of the beach.

**Beach-related services**—Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel

necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

**Beach user fee**—A fee collected by a local government in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

**Blowout**—A breach in the dunes caused by wind erosion.

**Breach**—A break or gap in the continuity of a dune caused by wind or water.

**Bulkhead**—A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

**Coastal and shore protection project**—A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

**Commercial facility**—Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

**Construction**—Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to land or the size of any structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to land or the size of any structure" include, but are not limited to, creation of vehicular or pedestrian trails, landscape work (that adversely affects dunes or dune vegetation), and increasing the size of any structure.

**Coppice mounds**—The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

**Critical dune areas**—Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

**Cumulative impact**—The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

**Dedication**—Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

**Dune**—An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are usually marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, and man-made vegetated mounds.

**Dune complex or dune area**—Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes contain depressions known as swales.

Dune Protection Act—Texas Natural Resources Code, §§63.001, et seq.

Dune protection and beach access plan or plan—A local government's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, as required by the Dune Protection Act and the Open Beaches Act.

Dune protection line—A line established by a county commissioners court or the governing body of a municipality for the purpose of preserving, at a minimum, all critical dune areas identified by the General Land Office pursuant to the Dune Protection Act, §63.011, and §15.3(f) of this title (relating to Administration). A municipality is not authorized to establish a dune protection line unless the authority to do so has been delegated to the municipality by the county in which the municipality is located. Such lines will be located no farther than 1,000 feet landward of the mean high tide of the Gulf of Mexico.

Dune protection permit or permit—The document issued by a local government to authorize construction or other regulated activities in a specified location seaward of a dune protection line or within a critical dune area, as provided in the Texas Natural Resources Code, §63.051.

Dune vegetation—Flora indigenous to natural dune complexes, and growing on naturally-formed dunes or man-made vegetated mounds on the Texas coast and can include coastal grasses and herbaceous and woody plants.

Effect or effects—"Effects" include: direct effects—those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and occur at the same time and place; and indirect effects—those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in this subchapter are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

Eroding area—A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology. Local governments may establish an "eroding area boundary" in beach/dune plans; this boundary shall be whichever distance landward of the line of vegetation is greater: 200 feet, or the distance determined by multiplying 50 years by the annual historical erosion rate (based on the most recent data published by the University of Texas at Austin, Bureau of Economic Geology).

Erosion—The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

Erosion response structure—A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

FEMA—The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

Foredunes—The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be

large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaches and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

Foredune ridge—The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

Habitable structure perimeter or footprint—The area of a lot covered by a structure used or usable for habitation. The habitable structure perimeter or footprint does not include incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

Habitable structures—Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

Industrial facilities—Include, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20-39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). However, for the purposes of this subchapter, the establishments listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities." These establishments are listed in "Appendix I" attached to this section.

Figure: 31 TAC §15.2

Large-scale construction—Construction activity greater than 5,000 square feet in area and habitable structures greater than two stories in height. Multiple-family habitable structures are typical of this type of construction.

Line of vegetation—The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach.

Local government—A municipality, county, any special purpose district, any unit of government, or any other political subdivision of the state.

Man-made vegetated mound—A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

Master plan—A plan developed by the applicant in consultation with the General Land Office, the Office of the Attorney General, the applicant or applicants, and the local government, for the development of an area subject to the beach/dune rules, as identified in §15.3 of this subchapter (relating to Administration). The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, and tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures, retaining walls, or stormwater treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the

Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the beach/dune rules, but may vary from the specific standards, means and methods provided in the beach/dune rules if the degree of dune protection and the public's right to safe and healthy use of and access to and from the public beach are preserved. If all impacts to dunes, dune vegetation and public beach use and access are accurately identified, local governments shall not require permits or certificates for construction on the individual lots within the master plan area. Master plans are intended to provide a comprehensive option for planning along the Texas coast.

**Material changes**—Changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to a local government or after the local government issues a permit or certificate. Material changes are those additional or unanticipated changes which have caused or will cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

**Mitigation sequence**—The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

**National Flood Insurance Act**—42 United States Code, §§4001, et seq.

**Natural resources**—Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

**Open Beaches Act**—Texas Natural Resources Code, §§61.001, et seq.

**Owner or operator**—Any person owning, operating, or responsible for operating commercial or industrial facilities.

**Permit or certificate condition**—A requirement or restriction in a permit or certificate necessary to assure protection of life, natural resources, property, and adequate beach use and access rights (consistent with the Dune Protection Act) which a permittee must satisfy in order to be in compliance with the permit or certificate.

**Permittee**—Any person authorized to act under a permit or a certificate issued by a local government.

**Person**—An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

**Pipeline**—A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

**Practicable**—In determining what is practicable, local governments shall consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Local governments shall also consider the cost of the technology or technique.

**Production and gathering facilities**—The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

**Project area**—The portion of a site or sites which will be affected by proposed construction.

**Public beach**—As used in this subchapter, "public beach" is defined in the Texas Natural Resources Code, §61.013(c).

**Recreational activity**—Includes, but is not limited to, hiking, sunbathing, and camping for less than 21 days. As used in §15.3(s)(2) (C) of this title (relating to Administration), recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational

vehicles is not considered a recreational activity, whether private or public.

**Recreational vehicle**—A dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle used for recreational purposes.

**Restoration**—The process of constructing man-made vegetated mounds, repairing damaged dunes, or vegetating existing dunes.

**Retaining wall**—A structure designed to contain or which primarily contains material or prevents the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

**Sand budget**—The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

**Seawall**—An erosion response structure specifically designed to or which will withstand wave forces.

**Seaward of a dune protection line**—The area between a dune protection line and the line of mean high tide.

**Small-scale construction**—Construction activity less than or equal to 5,000 square feet and habitable structures less than or equal to two stories in height. Single-family habitable structures are typical of this type of construction.

**Structure**—Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

**Swales**—Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

**Unique flora and fauna**—Endangered or threatened plant or animal species listed at 16 United States Code Annotated, §1531, the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that a local government has determined in their local beach/dune plan are rare or uncommon.

**Washover areas**—Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.

### *§15.3. Administration.*

(a) Integration of dune protection and beach access programs. The Dune Protection Act and the Open Beaches Act require certain local governments to adopt and implement programs for the preservation of dunes and the preservation and enhancement of use of and access to and from public beaches. These Acts provide for regulation of generally the same activities and the same geographic areas, and their requirements are scientifically and legally related. Local governments required to adopt dune protection and beach access programs shall integrate them into a single plan consisting of procedural and substantive requirements for management of the beach/dune system within their jurisdiction. The authority to integrate such plans is provided pursuant to the Dune Protection Act, the Open Beaches Act, and this subchapter. The local government plans shall be consistent with the requirements of the Open Beaches Act, the Dune Protection Act, and this subchapter, and each shall, whenever possible, incorporate the local government's ordinary land use planning procedures.

(b) Boundary of the public beach. The public beach is defined in the Open Beaches Act, §61.013(c), and §15.2 of this title (relating to Definitions). The line of vegetation is defined in the Open Beaches Act, §61.001(5), and §15.2 of this title (relating to Definitions). The line of vegetation is typically used to determine the landward extent of the public beach. However, there are portions of the Texas coast where there is no marked vegetation line or the line is discontinuous or modified. In those portions of the coast, the line

of vegetation shall be determined consistent with §15. 10(b) of this title (relating to General Provisions) and the Open Beaches Act, §61.016 and §61.017.

(c) Beachfront construction certification areas. The General Land Office, in conjunction with the attorney general's office, has the responsibility of protecting the public's right to use and have access to and from the public beach and of providing standards to the local governments certifying construction on land adjacent to the Gulf of Mexico consistent with such public rights. The Open Beaches Act, §61.011(d) (6), limits the geographic scope of the beachfront construction certification area to the land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or the area up to 1,000 feet of mean high tide, whichever distance is greater. For this area, local governments shall prepare a beach access and use program, pursuant to the Open Beaches Act, §61.015, for inclusion in their dune protection and beach access plans to control any adverse effects of beachfront construction on public beach use and access. Applications for beachfront construction certificates shall be reviewed by local governments for consistency with their dune protection and beach access plans.

(d) Critical dune areas and dune protection lines. The commissioner of the General Land Office, as trustee of the public lands of Texas, has the responsibility to identify and protect Texas' critical dune areas that are essential to the protection of coastal public land, public roads, public beaches, and other public resources. Local governments have the responsibility to establish dune protection lines for the purpose of preserving sand dunes within their jurisdiction. The Dune Protection Act, §63.121 and §63.012, respectively, limits the geographic scope of critical dune areas and the location of the dune protection line to that portion of the beach within 1,000 feet of mean high tide of the Gulf of Mexico.

(e) Identification of critical dune areas. Pursuant to the authority provided in the Dune Protection Act, §63.121, the General Land Office has identified critical dune areas as all dunes and dune complexes located within 1,000 feet of mean high tide of the Gulf of Mexico. This identification is based on the determination that all of the various protective functions served by the dunes and dune complexes located within that 1,000 feet are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves. Critical dune areas are related to dune protection lines in that local governments are required to establish such lines for the purpose of preserving dunes in a location landward of all critical dune areas. Criteria for establishing dune protection lines shall, at a minimum, include the criteria for establishing critical dune areas in this subsection.

(f) Establishment of dune protection lines. Pursuant to the authority provided in the Dune Protection Act, §63.011, local governments shall establish and maintain dune protection lines which preserve, at a minimum, the dunes within the critical dune areas as defined in this subchapter. A local government must conduct a field inspection to determine the appropriate location of the line unless it proposes to establish or relocate its line at a distance of 1,000 feet of mean high tide of the Gulf of Mexico, as that 1,000 feet is the maximum extent of the local government's jurisdiction for establishing dune protection lines.

(g) Deadline for establishment of dune protection lines. Local governments shall establish dune protection lines as part of the dune protection component of their local plans. The local plans shall be submitted to the state no later than 180 days after the effective date of this subchapter. Therefore, local governments shall establish dune protection lines no later than 180 days after this subchapter goes into effect.

(h) Information required regarding dune protection lines. Local governments are required to submit the following information to the General Land Office to allow state evaluation of the adequacy of the dune protection line location: a map or drawing of the line; a written description of the line; or a written description and a map or drawing. This information shall be included in the local government's dune protection and beach access plan and must clearly designate for the public and the state the location of the line and the location of dunes seaward of the line. All maps, drawings, or descriptions shall incorporate sufficient elements of the Texas State Plane Coordinate System to enable such description to be located on the ground and shall be tied to and/or include the Texas State Plane Coordinates for two or more monumented points along any described boundary. Each local government shall file a map or drawing or description of its dune protection line with the clerk of the county or municipality establishing the line.

(i) State assistance in the establishment of local government dune protection lines. The General Land Office may assist and advise local governments in establishing or modifying a dune protection line. Pursuant to the Dune Protection Act, §63.013, local governments shall notify the General Land Office of the establishment of dune protection lines and any subsequent change in a line. Upon such notification, the General Land Office shall review the location of the line by examining the map or description of the line submitted to the state and by conducting field inspections, as necessary. The General Land Office will review the location of the line to determine whether the line meets the geographic standard of being located landward of all critical dune areas. If the General Land Office is satisfied that the line meets that geographic standard, the General Land Office will notify the local government of this finding in writing. If the line does not meet that geographic standard, the General Land Office will assist and advise the local government in adjusting the line.

(j) State review of dune protection line location. Each local government shall submit the information regarding the location of the dune protection line, as required in subsection (h) of this section, to the General Land Office as part of its dune protection and beach access plan. In determining whether to approve the local plan, the General Land Office will review the various components of the plan, including the adequacy of the location of a local government's dune protection line (with respect to the protection of critical dune areas), based on the geographic standards provided in subsection (i) of this section.

(k) Local government review of dune protection line location. Each local government shall review its dune protection line every five years to determine whether the line is adequately located to achieve the purpose of preserving critical dune areas. In addition to the five-year review, each local government shall review the adequacy of the location of the line within 90 days after a tropical storm or hurricane affects the portion of the coast in its jurisdiction.

(l) Provisions for public hearings on dune protection lines. Local governments shall provide notice of a public hearing to consider establishing or modifying a dune protection line by publishing such notice at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing. Notice shall be given to the General Land Office not less than one week nor more than three weeks before the hearing. In the notice to the General Land Office, local governments shall also include the information described in subsection (h) of this section.

(m) Local government authority. Local governments shall include in the plans submitted to the General Land Office and the attorney general's office citations of all statutes, policies, and ordinances which demonstrate the authority of the local government to implement and enforce the plan in a manner consistent with the requirements of this subchapter. Local government plans shall also

demonstrate the coordination, on the local level, of the dune protection, beach access, erosion response, and flood protection programs (if participating in the National Flood Insurance Program under the National Flood Insurance Act). Each local government shall integrate these programs into one plan for the management of the beach/dune system within its jurisdiction. The General Land Office will provide written guidance on the form and content of the plan upon written request by a local government.

(n) Content of local government dune protection and beach access plans. Local government plans shall contain procedural mechanisms and substantive requirements necessary for compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act. Local governments shall attach copies of this subchapter, the Dune Protection Act, and the Open Beaches Act to their plans, and their plans shall state that these state laws are incorporated into the plans. A local government shall also state in its plan that any person in violation of the incorporated state laws is in violation of its local plan.

(o) Submission of local government plans to state agencies. Local governments shall submit dune protection and beach access plans to the General Land Office for review, comment, and certification as to compliance with this subchapter, the Dune Protection Act, and the Open Beaches Act and to the attorney general's office for review and comment. A local government's governing body must formally approve the plan prior to submission to the state agencies. Prior to formally approving its plan, a local government may request legal and technical advice from the General Land Office for assistance in meeting the requirements for state agency approval. The General Land Office shall either grant or deny certification of a local government's formally approved dune protection and beach access plan within 60 days of receipt of the plan. In the event of denial, the General Land Office shall send the plan back to the local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan for state agency review. The General Land Office shall use the same procedure for reviewing revised plans as the procedure used for reviewing the plan originally submitted. The General Land Office's certification of local government plans shall be by adoption into the rules authorized under the Texas Natural Resources Code, §61.011. The rules adopted by the General Land Office to certify plans will consist of state approval of the plans, but the text of plans will not be adopted by the General Land Office. Local governments may amend their dune protection and beach access plans by submitting the proposed changes to the General Land Office for review, comment, and certification and to the attorney general's office for review and comment. The General Land Office shall process the proposed plan amendments using the same procedures and criteria as used in approving the initial submissions.

(p) Submission deadline for dune protection and beach access plans. Local governments shall submit dune protection and beach access plans to the General Land Office and the attorney general's office no later than 180 days from the effective date of this subchapter. If the General Land Office does not approve a plan, the local government shall submit revisions of the plan until the plan is approved. However, any local government that submits a revised plan that has not been modified to address the state comments regarding the statutory requirements and the minimum standards identified in this subchapter is presumed to be in violation of this subchapter, the Open Beaches Act, and the Dune Protection Act. Local governments that fail to submit plans within 180 days of the effective date of this subchapter will be liable for penalties as provided in §15.9 of this title (relating to Penalties). Further, local governments that fail to submit plans by that deadline will not be authorized to permit construction within the geographic scope of this subchapter.

(q) Areas exempt from local government plans. Local government dune protection and beach access plans shall not include the following areas, which are exempt from regulation by local governments:

(1) national park areas, national wildlife refuges, or other designated national natural areas;

(2) state park areas, state wildlife refuges, or other designated state natural areas; and

(3) beaches on islands and peninsulas not accessible by public road or ferry facility for as long as that condition exists.

(r) State-owned or public land not exempt from local government plans. Local government plans shall apply to all state-owned or public land other than parks and refuges, subject to the provisions of the Texas Natural Resources Code, §§31.161, et seq.

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) Acts prohibited without a dune protection permit. Unless a dune protection permit is properly issued by a local government authorizing the conduct, no person shall:

(A) damage, destroy, or remove a sand dune or a portion of a sand dune seaward of a dune protection line or within a critical dune area; or

(B) kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

(2) Activities exempt from permit requirements. Pursuant to the Dune Protection Act, §63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, permittees shall comply with the local laws as well. The activities exempt from the permit requirements are:

(A) exploration for and production of oil and gas and reasonable and necessary activities directly related to such exploration and production, including construction and maintenance of production and gathering facilities located in a critical dune area which serve wells located outside of a critical dune area, provided that such facilities are located no farther than two miles from the well being served;

(B) grazing livestock and reasonable and necessary activities directly related to grazing; and

(C) recreational activities other than operation of a recreational vehicle.

(3) Acts prohibited without a beachfront construction certificate. No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the public beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that

affects or may affect public use of and access to and from public beaches unless the construction is properly certified by the appropriate local government as consistent with its local plan, this subchapter, and the Open Beaches Act.

(4) Permit and certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) Permit application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) the number of proposed structures and whether the structures are amenities or habitable structures;

(iv) the number of parking spaces;

(v) the approximate percentage of existing and finished open spaces (those areas completely free of structures);

(vi) the floor plan and elevation view of the structure proposed to be constructed or expanded;

(vii) the approximate duration of the construction;

(viii) a description (including location) of any existing or proposed walkways or dune walkovers on the tract;

(ix) a grading and layout plan identifying all elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade;

(x) photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract;

(xi) the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;

(xii) a comprehensive mitigation plan which includes a detailed description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation;

(xiii) proof of the applicant's financial capability acceptable to the local government to mitigate or compensate for adverse effects on dunes and dune vegetation;

(xiv) an accurate map, site plan, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the dune protection line, the line of vegetation, proposed and existing structures, and the project area of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) Certificate application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) the name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant;

(ii) a complete legal description of the tract and a statement of its size in acres or square feet;

(iii) the number of proposed structures and whether the structures are amenities or habitable structures;

(iv) a statement written by the applicant affirming that the construction, the completed structure, and use of or access to and from the structure will not adversely affect the public beach or public beach access ways or exacerbate erosion;

(v) the approximate duration of the construction;

(vi) a description (including location) of any existing or proposed walkways or dune walkovers in the tract;

(vii) photographs of the site which clearly show the current location of the vegetation line and any dunes on the tract which are seaward of the dune protection line;

(viii) an accurate map, site plan, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the proposed construction and the distance between the proposed construction and mean high tide, the vegetation line, the dune protection line, and the landward limit of the beachfront construction area;

(IV) the location of proposed and existing structures, and the size (in acres or square feet) of the proposed project area;

(V) proposed roadways and driveways;

(VI) proposed landscaping activities within 200 feet of the line of vegetation; and

(VII) the location of any retaining walls or erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line.

(C) Permit and certificate applications for large-scale construction. For all proposed large-scale construction, local governments shall require applicants to submit the following additional items and information:

(i) if the tract is located in a subdivision and the applicant is the owner or developer of the subdivision, a certified copy of the recorded plat of the subdivision, or, if not a recorded subdivision, a plat of the subdivision certified by a licensed surveyor, (if the area is located within an un-platted tract, a survey will suffice) and a statement of the total area of the subdivision in acres or square feet;

(ii) in the case of multiple-unit dwellings, the number of units proposed;

(iii) alternatives to the proposed location of construction on the tract or to the proposed methods of construction which would cause fewer or no adverse effects on dunes and dune vegetation or less impairment of beach access; and

(iv) the proposed activity's impact on the natural drainage pattern of the site and the adjacent lots.

(D) Submission of readily available information with permit and certificate applications. For all proposed construction (large and small-scale), if applicants already have the following items and information, local governments shall require them to be submitted in addition to the other information required:

(i) the most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) and the activity's potential impact on coastal erosion; and

(ii) a copy of the FEMA "Elevation Certificate."

(E) Submission of information by local governments. For all proposed construction (large and small-scale), local governments shall provide to the state the following information:

(i) a copy of the community's most recent flood insurance rate map identifying the site of the proposed construction;

(ii) a preliminary determination as to whether the proposed construction complies with all aspects of the local government's dune protection and beach access plan;

(iii) the activity's potential impact on the community's natural flood protection and protection from storm surge;

(iv) a description as to how the proposed beachfront construction complies with and promotes the local government's beach access policies and requirements, particularly, the dune protection and beach access plan's provisions relating to public beach ingress/egress, off-beach parking, and avoidance of reduction in the size of the public beach due to erosion; and

(v) copies of aerial photographs of the proposed construction site with a delineation of the footprint of the proposed construction, if the local government has aerial photographs of the area in which construction is proposed.

(F) Dissemination of erosion data and other technical information. For all proposed construction (large and small-scale), the General Land Office shall be the state contact for erosion rate

data questions and supply available technical information to a local government, upon request.

(5) Master plan. Local governments may adopt separate ordinances or county commissioners court orders authorizing master plans located within the geographic scope of this subchapter. These ordinances and orders shall be consistent with and address the dune protection and beach access requirements of this subchapter, the Dune Protection Act and Open Beaches Act. The ordinances and orders shall be submitted to the General Land Office and the attorney general's office for review and approval to ensure consistency with this subchapter. When considering approval of a master planned development or construction plans and setting conditions for operations under such plans, local governments shall consider:

(A) the plan's potential effects on dunes, dune vegetation, public beach use and access, and the applicant's proposal to mitigate for such effects throughout the construction;

(B) the contents of the master planned development; and

(C) whether any component of the master plan, such as installation of roads or utilities, or construction of structures in critical dune areas or seaward of a dune protection line, will subsequently require a dune protection permit or a beachfront construction certificate. If a dune protection permit or beachfront construction certificate will be necessary, the local government shall require the developer to apply for the permit and/or certificate as part of the master plan approval process. This requirement only applies if the local government is authorizing activities impacting critical dune areas and public beach use and access under its dune protection and beach access plan.

(6) State agency comments.

(A) A person proposing to conduct an activity for which a permit or certificate is required shall submit a complete application to the appropriate local government. The local government shall forward the complete application, including any associated materials, to the General Land Office and the attorney general's office. The application, any documents associated with the application, and information as to when the decision will be made must be received by the General Land Office and the attorney general's office no later than 10 working days before the local government is first scheduled to act on the permit or certificate. Local governments shall not act on a permit or certificate application if the General Land Office and the attorney general's office have not received the application for the permit or certificate at least 10 working days before the local government is first scheduled to act on the permit or certificate. However, a local government may act on such applications if the state agencies received the application within the proper time frame and the state does not submit comments on the application to the local government.

(B) The General Land Office and the attorney general's office may submit comments on the proposed activity to the local government.

(7) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

(A) the permit or certificate application;

(B) the proposed activity's consistency with this subchapter and the local government's dune protection and beach



access plan, including the dune protection and beachfront construction standards contained in both;

(C) any other law relevant to dune protection and public beach use and access which affects the activity under review;

(D) the comments of the General Land Office and the attorney general's office; and

(E) any other information the local government may consider useful to determine consistency with the local government's dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of issuance. A local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if the activity as proposed in the application for renewal meets the applicable state and local standards and the permittee supplements the information provided in the original permit or certificate application materials with additional information indicating any changes to the original information provided by the applicant. For the purpose of maintaining administrative records for permits, certificates, and renewals, if any, local governments are required to keep all original application materials submitted by any applicant for three years, as provided in subsection (u) of this section. Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days. A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate. In addition, local governments shall require a permittee to apply for a new permit or a certificate if the proposed construction is changed in any manner which causes or increases adverse effects on dunes, dune vegetation, and public beach use and access within the geographic scope of this subchapter.

(2) Local governments that choose to authorize master plans may adopt a different term limit for permits and certificates only if the master plans are authorized under a separate, state-approved ordinance or county commissioners court order. Each master plan will be deemed to be a new local ordinance or county commissioners court order subject to state approval regarding effects on dunes, dune vegetation, and public beach use and access.

(3) Any dune protection permit or beachfront construction certificate allowing beachfront construction issued by a local government pursuant to its dune protection and beach access plan shall be voidable under the following circumstances.

(A) The permit or certificate is inconsistent with this subchapter or the local government's plan at the time the permit or certificate was issued.

(B) A material change occurs after the permit or certificate is issued.

(C) A permittee fails to disclose any material fact in the application.

(4) A local government shall require that a permittee apply for a new permit or certificate in the event of any material changes. A local government shall require that an applicant modify an application disclosing all information relevant to the material changes, if such changes occur before the local government issues the permit or certificate.

(5) A permit or certificate automatically terminates in the event the certified construction comes to lie within the boundaries of the public beach by artificial means or by action of storm, wind, water, or other naturally influenced causes. Nothing in the certificate shall be construed to authorize the construction, repair, or maintenance of any construction within the boundaries of the public beach at any time.

(u) Administrative record.

(1) Local governments shall compile and maintain an administrative record which demonstrates the basis for each final decision made regarding the issuance of a dune protection permit or beachfront construction certificate. The administrative record shall include copies of the following:

(A) all materials the local government received from the applicant as part of or regarding the permit or certificate application;

(B) the transcripts, if any, or the minutes and/or tape of the local government's meeting during which a final decision regarding the permit or certificate was made; and

(C) all comments received by the local government regarding the permit or certificate.

(2) Local governments shall keep the administrative record for a minimum of three years from the date of a final decision on a permit or certificate. Local governments shall send to the General Land Office or the attorney general's office, upon request by either agency, a copy of those portions of the administrative record that were not originally sent to those agencies for permit or certificate application review and comment. The record must be received by the appropriate agency no later than 10 working days after the local government receives the request. The state agency reviewing the administrative record shall notify the appropriate permittee of the request for a copy of the administrative record from the local government. Upon request of the permittee, a local government shall provide to the permittee copies of any materials in the administrative record regarding the permit or certificate which were not submitted to the local government by the permittee (i.e., the permit application) or given to the permittee by the local government (i.e., the permit).

#### *§15.6. Concurrent Dune Protection and Beachfront Construction Standards.*

(a) Local government application of standards. This section provides the standards local governments shall follow when issuing, denying, or conditioning dune protection permits and beachfront construction certificates. This section applies to all construction within the geographic scope of this subchapter and to either permits or certificates or both. The requirements of this section are in addition to the requirements in §15.4 of this title (relating to Dune Protection Standards), and §15.5 of this title (relating to Beachfront Construction Standards).

(b) Location of construction. Local governments shall require permittees to locate all construction as far landward as is practicable and shall not allow any construction which may aggravate erosion.

(c) Prohibition of erosion response structures. Local governments shall not issue a permit or certificate allowing construction of an erosion response structure. However, a local government may issue a permit or certificate authorizing construction of a retaining wall, as defined in §15.2 of this title (relating to Definitions), under the following conditions. These conditions only apply to the construction of a retaining wall; all other erosion response structures are prohibited.

(1) A local government shall not issue a permit authorizing the construction of a retaining wall within the area 200 feet landward of the line of vegetation.

(2) A local government may issue a permit authorizing construction of a retaining wall in the area more than 200 feet landward of the line of vegetation.

(d) Existing erosion response structures. In no event shall local governments issue permits or certificates authorizing maintenance or repair of an existing erosion response structure on the public beach or the enlargement or improvement of the structure within 200 feet landward of the natural vegetation line. Also within 200 feet landward of the natural vegetation line, local governments shall not issue a permit or certificate allowing any person to maintain or repair an existing erosion response structure if the structure is more than 50% damaged, except under the following circumstances.

(1) When failure to repair the structure will cause unreasonable hazard to a public building, public road, public water supply, public sewer system, or other public facility immediately landward of the structure.

(2) When failure to repair the structure will cause unreasonable flood hazard to habitable structures because adjacent erosion response structures will channel floodwaters to the habitable structure.

(e) Construction in flood hazard areas.

(1) A local government shall not issue a permit or certificate that does not comply with FEMA's regulations governing construction in flood hazard areas. FEMA prohibits man-made alteration of sand dunes and mangrove stands within Zones V1-30, V, and VE on the community's flood insurance rate maps which would increase the potential for flood damage.

(2) A local government shall inform the General Land Office and the FEMA regional representative in Texas before it issues any variance from FEMA regulations or allows any activity done in variance of FEMA's regulations found in Volume 44 of the Code of Federal Regulations, Parts 59-77. Variances may adversely affect a local government's participation in the National Flood Insurance Program.

(3) A local government shall not issue a permit or certificate that does not comply with FEMA minimum requirements or with the FEMA-approved local ordinance or county commissioners court order.

(f) Construction in eroding areas. Local governments with jurisdiction over eroding areas shall follow the standards provided in §15.4 of this title (relating to Dune Protection Standards) and to §15.5 of this title (relating to Beachfront Construction Standards). If there is any conflict between this subsection, §15.4 of this title (relating to Dune Protection Standards, and §15.5 of this title (relating to Beachfront Construction Standards, this subsection applies. The General Land Office shall supply information for or assist a local government in determining eroding areas and the landward boundary of eroding areas. In addition, because of the higher risk of damage from flooding or erosion in such areas, local governments shall:

(1) require that structures built in eroding areas be elevated on pilings in accordance with FEMA minimum standards or above the natural elevation (whichever is greater);

(2) require that structures located on property adjacent to the public beach be designed for feasible relocation;

(3) allow a permittee to alter or pave only the ground within the footprint of the habitable structure (however, brick pavers, gravel or crushed limestone may be used to stabilize driveways) only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line of vegetation or landward of an eroding area boundary established in the local beach/dune plan, whichever distance is greater; and

(4) Unless otherwise restricted by the local plan, and if consistent with the requirements of the National Flood Insurance Program, local governments may permit the construction of break-away or louvered walls for a storage area no larger than 300 square feet.

(g) Construction affecting natural drainage patterns. Local governments shall not issue a certificate or permit authorizing construction unless the construction activities will minimize impacts on natural hydrology. Such projects shall not cause erosion of adjacent properties, critical dune areas, or the public beach.

(h) Emergency response to oil or hazardous substance spills. Any person responding to spills shall comply with the following regulations when cleaning up or disposing of oil or hazardous substances in the beach/dune system.

(1) The state on-scene coordinator is responsible for contacting the GLO Resource Management Division regarding proposed cleanup and disposal methods.

(2) The state on-scene coordinator shall, in consultation with the state natural resource trustees and through the Incident Command System, determine the appropriate depth for excavation and the appropriate quantity of sand to be removed, if any, from the beach/dune system.

(A) Spill cleanup. Cleanup methods shall avoid and otherwise minimize adverse impacts to the beach/dune system by ensuring that:

(i) Removal of sand from the beach is limited to the absolute minimum and will not exacerbate shoreline erosion.

(ii) Manual cleanup methods are used, if practicable.

(iii) Grading or scraping of the beach is minimized, and grading of non-oiled or non-hazardous areas is prohibited.

(B) Disposal of contaminated sand. Disposal methods shall avoid adverse impacts to the beach/dune system by ensuring that:

(i) Before any scraped sand is relocated within the beach/dune system, the material shall be tested for toxicity and percent of oiling. Only material that does not pose a threat to human health and the environment may remain in the beach/dune system. New dunes (man-made mounds) may be built with non-hazardous material provided that they are built in accordance with §15.7(e) of this title (relating to Restored dunes on public beaches) and placed in areas preapproved by the state natural resource trustees. A dune protection permit is not required for such new dune creation. The disposal shall be in accordance with applicable, relevant and appropriate requirements established by local state and federal laws.

(ii) Hazardous materials shall be removed and disposed of as required by local state and federal laws.

(iii) Disposal of waste must be in compliance with applicable state and federal laws and regulations of the Texas

Natural Resources Conservation Commission and the United States Environmental Protection Agency. Disposal of oiled, non-hazardous sand shall be in accordance with applicable state and federal law, except that such sand shall not be disposed of in a location on or adjacent to dune vegetation, as defined in §15.2 of this title (relating to Definitions).

*§15.7. Local Government Management of the Public Beach.*

(a) Standards applicable to local governments. This section provides standards applicable to local government issuance, denial, or conditioning of permits or certificates, as well as all other local government activities relating to management of public beaches.

(b) Construction of coastal and shore protection projects. Local governments shall encourage carefully planned beach nourishment and sediment bypassing for erosion response management and prohibit erosion response structures within the public beach and 200 feet landward of the natural vegetation line.

(c) Monitoring. A local government or the state may require a permittee to conduct or pay for a monitoring program to study the effects of a coastal and shore protection project on the public beach. Further, permittees are required to notify the state and the appropriate local government of any discernible change in the erosion rate on their property.

(d) Requirements for beach nourishment projects. A local government shall not allow a beach nourishment project unless it finds and the project sponsor demonstrates that the following requirements are met.

(1) The project is consistent with the local government's dune protection and beach access plan.

(2) The sediment to be used is of effective grain size, mineralogy, and quality or the same as the existing beach material.

(3) The proposed nourishment material does not contain any of the hazardous substances listed in the Code of Federal Regulations, Volume 40, Part 300, in concentrations which are harmful to human health or the environment as determined by applicable, relevant, and appropriate requirements established by the local, state, and federal governments.

(4) There will be no adverse environmental effects on the property surrounding the area from which the sediment will be taken or to the site of the proposed nourishment.

(5) The removal of sediment will not have any adverse impacts on flora and fauna.

(6) There will be no adverse effects caused from transporting the nourishment material.

(e) Restored dunes on public beaches. Sand dunes, either naturally created or restored, may aid in the preservation of the common law public beach rights by slowing beach erosion processes. Except as otherwise provided, local governments shall allow restoration of dunes on the public beach only under the following conditions. Restored dunes may be located farther seaward than the 20-foot restoration area only upon an affirmative demonstration by the permit applicant that substantial dunes would likely form farther seaward naturally. Such seaward extension past the 20-foot area must first receive prior written approval of the General Land Office and the attorney general's office. In the absence of such an affirmative demonstration by the applicant, a local government shall require the applicant to meet the following standards relating to the location of restored dunes.

(1) Local governments shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the landward boundary of the public beach. Local governments shall ensure that the 20-foot restoration area follows the natural migration of the vegetation line.

(2) Local governments shall not allow any person to restore dunes, even within the 20-foot corridor, if such dunes would restrict or interfere with the public use of the beach at normal high tide.

(3) Local governments shall require persons to restore dunes to be continuous with any surrounding naturally formed dunes and shall approximate the natural position, contour, volume, elevation, vegetative cover, and sediment content of any naturally formed dunes in the proposed dune restoration area.

(4) Local governments shall require persons restoring dunes to use indigenous vegetation that will achieve the same protective capability as the surrounding natural dunes.

(5) Local governments shall not allow any person to restore dunes using any of the following methods or materials:

(A) hard or engineered structures;

(B) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

(C) fine, clayey, or silty sediments;

(D) sediments containing the toxic materials listed in Volume 40 of the Code of Federal Regulations, Part 302.4 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; and

(E) sand obtained by scraping or grading dunes or the beach.

(6) Local governments may allow persons to use the following dune restoration methods or materials:

(A) piles of sand having similar grain size and mineralogy as the surrounding beach;

(B) temporary sand fences conforming to General Land Office guidelines;

(C) organic brushy materials such as used Christmas trees; and

(D) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any changes that may increase erosion of the public beach.

(7) Local governments shall protect restored dunes under the same restrictions and requirements as natural dunes under the local government's jurisdiction. All applications submitted to a local government for restoring dunes on the public beach shall be forwarded to both the General Land Office and the attorney general's office at least ten working days prior to the local government's consideration of the permit. Failure of the General Land Office or the attorney general's office to submit comments on an application shall not waive, diminish, or otherwise modify the beach access and use rights of the public.

(8) Local governments shall not allow a permittee to construct or maintain a private structure on the restored dunes within critical dune areas or seaward of a dune protection line, except for

specifically permitted dune walkovers or similar access ways.

(f) Scientific research projects. Local governments may exempt a scientific research project from the requirements of §15.4(c) or §15.7(e) provided the research is conducted by an academic institution or state, federal, or local government. Prior to conducting the research, the project manager shall submit a detailed work plan and monitoring plan for approval by the General Land Office and the Office of the Attorney General. The research activities shall not materially weaken existing dunes or dune vegetation, or increase erosion of adjacent properties.

(g) Dune walkovers. Local governments shall only allow dune walkovers, including other similar beach access mechanisms, which extend onto the public beach under the following circumstances.

(1) Local governments shall require that permittees restrict the walkovers, to the greatest extent possible, to the most landward point of the public beach.

(2) Local governments shall require that permittees construct and locate the walkovers in a manner that will not interfere with or otherwise restrict public use of the beach at normal high tides.

(3) Local governments shall require that permittees relocate walkovers to follow any landward migration of the public beach or seaward migration of dunes using the following procedures and standards.

(A) After a major storm or any other event causing significant landward migration of the landward boundary of the public beach, local governments shall require permittees to shorten any dune walkovers encroaching on the public beach to the appropriate length for removal of the encroachment. This requirement shall be contained as a condition in any permit and certificate issued authorizing construction of walkovers. Local governments are required to assess the status of the public beach boundary within 30 days after a major storm or other event causing significant landward migration of the public beach. After the assessment, local governments shall inform the General Land Office and the attorney general's office of any encroachments on the public beach within ten days of completing the assessment.

(B) In cases where the migration of the landward boundary of the public beach occurs slowly over a period of time or where a dune walkover needs to be lengthened because of the seaward migration of dunes, the permittee shall apply for a permit or certificate authorizing the modification of the structure.

(h) Preservation and enhancement of public beach use and access. A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. A local government shall not impair or close an existing access point or close a public beach to pedestrian or vehicular traffic without prior approval from the General Land Office.

(1) For the purposes of this subchapter, beach access and use is presumed to be preserved if the following criteria are met.

(A) Parking on or adjacent to the beach is adequate to accommodate one car for each 15 linear feet of beach.

(B) Where vehicles are prohibited from driving on and along the beach, ingress/egress access ways are no farther apart than 1/2 mile.

(C) Signs are conspicuously posted which explain the nature and extent of vehicular controls, parking areas, and access points. Local governments may establish their own beach access and use standards for General Land Office approval and certification based upon the General Land Office's affirmative finding that such standards preserve and enhance the public's right to use and access the public beach.

(2) A local government shall have an adopted, enforceable, written policy prohibiting the local government's abandonment, relinquishment, or conveyance of any right, title, easement, right-of-way, street, path, or other interest that provides existing or potential beach access, unless an alternative equivalent or better beach access is first provided by the local government consistent with its dune protection and beach access plan.

(3) This provision does not apply to any existing local government traffic regulations enacted before the effective date of this subchapter, and the former law is continued in effect until the regulations are amended or changed in whole or in part. New or amended vehicular traffic regulations enacted for public safety, such as establishing speed limits and pedestrian rights-of-way, are exempt from the certification procedure but must nevertheless be consistent with the Open Beaches Act and this subchapter.

(4) This subchapter does not prevent a local government from using its existing authority to close individual beach access points for emergencies related to public safety. However, the standards and procedures for such emergency closures shall be included in its state-approved dune protection and beach access plan.

(i) Request for state agency approval of beach access plan. When requesting approval, a local government shall submit a plan to the General Land Office and the attorney general's office providing the following information:

(1) a current description and map of the entire beach access system within its jurisdiction;

(2) the status of beach access demonstrated through evidence such as photographs, surveys, and statistics regarding the number of beach users;

(3) a detailed description of the proposed beach access plan replacing the existing beach access system. Such description shall demonstrate the method of providing equivalent or better access to and from the public beaches; and

(4) a vehicular control plan, if the local government proposes either new or amended vehicular controls for the public beach. The vehicular control plan must include, at a minimum, the following information:

(A) an inventory and description of all existing vehicular access ways to and from the beach and existing vehicular use of the beach;

(B) all legal authority, including local government ordinances that impose existing vehicular controls;

(C) a statement of any short-term or long-range goals for restricting or regulating vehicular access and use;

(D) an analysis and statement of how the proposed vehicular controls are consistent or inconsistent with the state standards for preserving and enhancing public beach access set forth in this subchapter. If a local government or the state determines that the vehicular controls are not consistent with state standards, the local government shall prepare a plan for achieving consistency within a period of time to be determined by the General Land Office and the attorney general's office. This plan shall include a detailed descrip-

tion of the means and methods of upgrading the availability of public parking and access ways, including funding for such improvements; and

(E) a description of how vehicular management relates to beach construction management, beach user fees, and dune protection within the jurisdiction of the local government.

(j) Integration of vehicular control plan and other plans. Integration of vehicular control plan and other plans. The vehicular control plan may be a part of a local government's beach access and use plan required under the Texas Natural Resources Code, §61.015, any beach user fee plan required under the Texas Natural Resources Code, §61.022, and any dune protection program required under the Texas Natural Resources Code, Chapter 63. The General Land Office encourages local governments to combine and integrate these various plans and programs.

(k) State agency approval of vehicular control plan adopted or amended after the effective date of this subchapter. A local government shall submit the vehicular control plan to the General Land Office and the attorney general's office no later than 90 working days prior to taking any action on the plan. This provision does not prevent a local government from exercising its existing authority over vehicular controls in emergencies. The standards and procedures for such emergency vehicular controls shall be submitted to the state in the vehicular control portion of a local government's dune protection and beach access plan. A plan may be approved if the vehicular controls are found to be consistent with the Open Beaches Act and with this subchapter. Prior to final adoption or implementation of a new or amended vehicular control ordinance, the local government shall obtain state certification of the plan for vehicular control pursuant to the Open Beaches Act, Texas Natural Resources Code, §61.022.

(l) Maintaining the public beach. Local governments shall prohibit beach maintenance activities unless maintenance activities will not materially weaken dunes or dune vegetation or reduce the protective functions of dunes. Local governments shall prohibit beach maintenance activities which will result in the significant redistribution of sand or which will significantly alter the beach profile or the line of vegetation. All sand moved or redistributed due to beach maintenance activities shall be returned to the area between the line of vegetation and mean high tide. The General Land Office encourages the removal of litter and other debris by handpicking or raking and strongly discourages the use of machines (except during peak visitation periods which disturb the natural balance of gains and losses in the sand budget and the natural cycle of nutrients.

(m) Prohibitions on signs. A local government shall not cause any person to display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or allow to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to and from the public beach or the right to use the public beach as guaranteed by this subchapter, the Open Beaches Act, and the common law right of the public.

#### *§15.10. General Provisions.*

(a) Construction. A local government's ordinances, orders, resolutions, or other enactments covered by this subchapter shall be read in harmony with this subchapter. If there is any conflict between them which cannot be reconciled by ordinary rules of legal interpretation, this subchapter controls. Certification of a local government's beach access and use plan by the General Land Office may not be construed to expand or detract from the statutory or constitutional authority of that local government or any other governmental entity, nor may any person construe such certification to

authorize a local government or any other governmental entity to alienate public property rights in public beaches.

(b) Boundary of the public beach. The attorney general shall make determinations on issues related to the location of the boundary of the public beach and encroachments on the public beach pursuant to the requirements of the Open Beaches Act, §61.016 and §61.017, and §15.3(b) of this title (relating to Administration). The General Land Office and the local governments will consult with the attorney general whenever questions of encroachment and boundaries arise with respect to the public beach.

(c) Public beach presumption. Except for beaches on islands or peninsulas not accessible by public road or ferry facility, in administering its plan a local government shall presume that any beach fronting the Gulf of Mexico within its jurisdiction is a public beach unless the owner of the adjacent land obtains a declaratory judgment otherwise under the Open Beaches Act, §61.019. That section provides that any person owning property fronting the Gulf of Mexico whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(d) Violations. No person shall violate any provision of this subchapter, a local government dune protection and beach access plan, or any permit or certificate or the conditions contained therein.

(e) Reporting violations. Any local government with knowledge of a violation or a threatened violation of a permit, a certificate, its dune protection and beach access plan, the Dune Protection Act, the Open Beaches Act, or this subchapter shall inform the General Land Office of the violation(s) within 24 hours.

(f) Withdrawal of plan certification. The General Land Office may withdraw certification of all or any part of a local government's dune protection and beach access plan if the local government does not comply with its plan, this subchapter, the Dune Protection Act, or the Open Beaches Act. Without further action by the General Land Office, a local government loses, by operation of law, the authority to issue permits or certificates authorizing construction within the geographic scope of this subchapter and the privilege to collect beach user fees if state agency certification of its dune protection and beach access plan is withdrawn.

(g) Notice of withdrawal of plan certification. The General Land Office will notify the local government and the attorney general's office 60 days prior to withdrawing General Land Office certification of the local government's plan. The local government may submit to the General Land Office any evidence demonstrating full compliance with its plan, this subchapter, the Dune Protection Act, and the Open Beaches Act. The General Land Office will consider the good faith efforts of any local government to immediately and fully comply with those laws during the 60-day period after the notification of intent to withdraw certification.

(h) The provisions contained in this subchapter do not limit the authority of the General Land Office and the attorney general's office to enforce this subchapter, the Dune Protection Act, and the Open Beaches Act pursuant to the Texas Natural Resources Code, §63.181 and §61.018.

(i) Appeals. The Dune Protection Act, §63.151, and the Open Beaches Act, §61.019, contain the provisions for appeals related to this subchapter.

(j) Grandfathered plans. Nothing in the amendments shall require modifications of any dune protection and beach access plan certified on or prior to the effective date of these amendments. All permits and certificates shall be issued in accordance with the General Land Office rules for management of the beach/dune system as described in this chapter.

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 26, 1996.

TRD-9604259 Garry Mauro  
Commissioner  
General Land Office

Effective date: April 16, 1996

Proposal publication date: September 26, 1995

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

◆ ◆ ◆  
• **31 TAC §15.11**

The General Land Office adopts an amendment to §15.11, concerning certification of local government dune protection and beach access plans (plans), with changes to the proposed text as published in the September 26, 1995, version of the *Texas Register* (20 TexReg 7808). Section 15.11(a), (b) and (f) were changed.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63) and the General Land Office Rules for the Management of the Beach/Dune System (beach/dune rules) (31 TAC, Chapter 15, Subchapter A), each local government with jurisdiction over public beaches adjacent to the Gulf of Mexico must submit to the General Land Office a plan to protect sand dunes and to preserve and enhance the public's right to use and have access to and from Texas' public beaches. The General Land Office must review these plans, and any subsequent plan amendments, and certify by rule the plans and amended plans which are consistent with the Open Beaches Act, Dune Protection Act and the beach/dune rules.

The plans are the product of a state and local government partnership which recognizes the economic and environmental benefits of protecting the beach/dune system and preserving and enhancing the public's right to use and have access to and from Texas' public beaches. The plans are designed to assist Texans in protecting private property, structures, and public beaches from the ravages of erosion, flooding, and a dwindling sand budget. The beach/dune system is an invaluable and irreplaceable part of the fragile, dynamic ecology of the Texas coast. Sand dunes are buffers against windblown salt and spray, and are vitally important in protecting inland property against storms and floods. Sand dunes store sand which is critical to replenishing Texas' eroding beaches and the sediment budget. The local plans certified in §15.11 are an integral component of the effort to preserve the dynamic and fragile Texas coast.

In the amendments to §15.11(a), the General Land Office certifies that the City of Corpus Christi and Cameron County plans are consistent with the beach/dune rules, the Open Beaches Act, and the Dune Protection Act.

In the amendments to §15.11(b), the General Land Office withdraws conditional certification of the Kleberg County and City of Corpus Christi plans. The General Land Office withdraws conditional certification of the Kleberg County plan because the county delegated its dune protection authority to the City of Corpus Christi, and pursuant to the Open Beaches Act, §61.015, the City of Corpus Christi manages beachfront construction and the public beaches within Kleberg County. The General Land Office withdraws conditional certification of the City of Corpus Christi's plan because the city adopted a revised plan, which the General Land Office certifies in the amendments to §15.11(a).

In the amendment to §15.11(f), the General Land Office deletes the reference to the General Land Office interim certification of the Cameron County plan, because the General Land Office certifies the county's revised plan in §15.11(a). No other subsections have been changed.

The General Land Office has prepared a taking impact assessment (TIA) for the adoption of these amendments. The General Land Office has determined that adoption of these amendments will not result in a taking of private real property. To receive a copy of the TIA, please send a written request to Cecelia Howells, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

One comment was received regarding the proposed amendments. The City of Corpus Christi requested that the dates identified in §15.11 be revised to reflect the date that a local government adopted its most recent version of a plan (i.e., to ensure that subsequent amendments were certified in addition to certification of the original plan). The purpose of providing the dates was to assist citizens in locating the official versions of the various local beach/dune plans. The dates in §15.11(a) and (b) were provided to the General Land Office by each local government. In addition, the General Land Office is now maintaining official copies of the local plans in the General Land Office Archives. Based on this comment, the General Land Office has revised §15.11(a) and (b) by adding the dates identified by local governments as the dates of adoption of the plans or plan amendments being certified by the General Land Office.

Section 15.11(a)(11) was amended to clarify that the Cameron County plan cannot and does not authorize encroachments on the public beach. The General Land Office's certification of the county's plan does not abrogate the specific provisions of the Open Beaches Act which address the preservation and enhancement of the public's right to use, enjoy and have access to and from the public beach.

The amendment is adopted under the Texas Natural Resources Code, §61.011(d)(5) and §63.121, which provides the General Land Office with the authority to promulgate rules, respectively, for the certification of local government beach access and use plans and for the identification and protection of critical dune areas.

*§15.11. Certification of Local Government Dune Protection and Beach Access Plans.*

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are certified as consistent with state law:

- (1) Brazoria County (adopted August 9, 1993, amended September 27, 1993);
  - (2) Chambers County (adopted August 9, 1993);
  - (3) City of Port Aransas (adopted February 15, 1995);
  - (4) City of Port Arthur (adopted April 12, 1993);
  - (5) Jefferson County (adopted August 16, 1993, amended March 7, 1994);
  - (6) Matagorda County (adopted February 13, 1995);
  - (7) Town of Quintana (adopted August 11, 1993); and
  - (8) Village of Jamaica Beach (adopted August 16, 1993, amended December 6, 1993);
  - (9) Town of South Padre Island (adopted October 5, 1994);
  - (10) City of Corpus Christi (adopted August 10, 1993);
- and
- (11) Cameron County (adopted September 20, 1994).

The 440-foot building line established in the Cameron County plan, Section III.L., shall not be operative unless it is landward of the line of vegetation. The line of vegetation shall be established as required in the Open Beaches Act, Texas Natural Resources Code, §61.017.

(b) Conditional certification of local government plans. The following local governments have submitted plans to the General Land Office which are conditionally certified as consistent with state law.

- (1) City of Galveston (adopted August 12, 1993). This certification is valid for 180 days, during which time the City of Galveston will modify its plan consistent with the General Land Office comments submitted to the City of Galveston (October 14, 1993).
- (2) Galveston County (adopted August 16, 1993). This certification is valid for 180 days, during which time Galveston

County will modify its plan consistent with the General Land Office comments submitted to Galveston County (October 18, 1993).

(3) Village of Surfside Beach. This certification is valid for 180 days, during which time the Village of Surfside Beach will modify its plan consistent with the General Land Office comments submitted to the Village of Surfside Beach (December 3, 1993).

(c) Implementation of conditionally certified plans. Local governments are required to implement conditionally certified plans consistent with the Texas Natural Resources Code, Chapters 61 and 63, and the General Land Office rules for management of the beach/dune system, §§15.1-15.10 of this chapter.

(d) Removal of conditions of certification.

(1) Local governments shall submit their modified plans on or before the expiration of the 180-day time period. The General Land Office shall provide to the pertinent local government a determination as to the sufficiency of the modification(s) within 60 days of receipt of the plan. The General Land Office will remove all conditions of the plan's certification by amending this subsection. Such amendments will list the name of the pertinent local government in subsection (a) of this section, and delete the same from subsection (b) of this section. If the General Land Office determines that modifications of plans are insufficient, the General Land Office shall provide specific exceptions to the modifications. If those portions of the plan to which the General Land Office has noted exceptions can be addressed through further comment, plan revision and review, conditional certification will be reissued pursuant to a General Land Office amendment to this subsection, subject to further plan modification.

(2) In the event that a local government chooses not to modify its plan as requested in the General Land Office comments, the local government shall provide in writing the scientific or legal justification as to why such modifications are not feasible. The justification shall be submitted to the General Land Office on or before the due date of the revised plan. The justification will be reviewed by the General Land Office, and a determination as to the sufficiency of the justification will be provided to the local government within 60 days of receipt by the General Land Office. Local government plans shall continue in effect under conditional certification until the sufficiency of the justification is resolved or this section is amended.

(e) Withdrawal of conditional certification. Conditional certification of a local government plan shall be withdrawn by the General Land Office after the 180-day time period if the pertinent local government does not submit to the General Land Office either a formally adopted plan which has been modified consistent with General Land Office comments or the written scientific or legal justification as to why such modification is not feasible. In any event, withdrawal of conditional certification shall only occur after the General Land Office adopts an amendment to this subsection withdrawing conditional certification, with accompanying specific reasons, and the General Land Office has given the pertinent local government written notice of the withdrawal of the conditional certification.

(f) This section does not affect the General Land Office interim certification issued to Nueces County on October 9, 1992, as defined in §15.72 of this chapter (relating to Administration) which continues in effect.

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 26, 1996.

TRD-9604260      Garry Mauro  
Commissioner  
General Land Office

Effective date: April 16, 1996

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

◆                    ◆                    ◆  
TITLE 31. NATURAL RESOURCES AND  
CONSERVATION

Part II. Texas Parks and Wildlife  
Department

Chapter 55. Law Enforcement

Subchapter I. Disposition of Dangerous Wild  
Animals

• 31 TAC §§55.501, 55.503, 55.505

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing, March 14, 1996, adopts new §§55.501, 55.503, and 55.505, concerning disposition of dangerous wild animals. Section 55.503 and §55.505 are adopted with changes to the proposed text as published in the February 9, 1996, issue of the *Texas Register* (21 TexReg 947). Section 55.501 is adopted without changes and will not be republished.

The amendment to §55.503 is due to the need, on occasion, to acquire the help of a licensed veterinarian if assistance is needed in euthanizing a dangerous wild animal. The amendment to §55.505 removes redundancy relating to the disposition of a dangerous wild animal by the court.

The adopted new sections implement Senate Bill 97, enacted by the 74th Session of the Texas Legislature.

The new rule allows for the Department to dispose of a live or dead dangerous wild animal that is seized as a result of a "canned hunt." When an animal is suffering due to illness or injury, the seized animal may be euthanized. If a person is convicted of a "canned hunt" violation, the seized live animal may be placed in a sanctuary or with a person who has a permit; or, if placement cannot be accomplished, then the seized animal may be euthanized. If there is no conviction, the disposition of the seized animal is decided by the court. If a person is convicted of a "canned hunt" violation and the seizure is a dead animal or animal part, then the Department may keep, destroy, or place the seizure on loan for educational display. If there is no conviction of a "canned hunt" violation, then the disposition of the seizure is decided by the court. If no decision is made by the court, then the seizure may be returned to the person from whom it was seized.

Public comment was received from two individuals who attended the public hearing in Austin. One person questioned where seized animals would be placed pending court action and how long would the Department wait before euthanizing the seized animal. Staff replied that an animal seized would be placed immediately into a permitted facility, pending a conviction, and that every effort would be made to properly place an animal before the Department resorted to euthanization. The same person wanted a seized animal placed in a non-profit sanctuary or in a non-profit organization facility that holds a USDA permit.

Another person wanted the euthanization performed only on an animal that was suffering and only by a licensed veterinarian. Due to the welfare of an animal that is suffering from illness or injury as a result of a "canned hunt" and the remote locations of "canned hunts," game wardens and authorized employees of the Department are essential when performing euthanization, particularly when a licensed veterinarian is not available. Upon a final conviction, all available sanctuaries and permitted facilities should be considered for placement of an animal that has been seized as a result of a "canned hunt."

The new sections are adopted under authority of Parks and Wildlife Code, Chapter 62, Subchapter F, which authorizes the Commission to establish regulations for the final disposition of a carcass, hide, part, product, or live animal seized.

*§55.503. Disposition of Live Animals.*

(a) A game warden, or other authorized Department employee, or a licensed veterinarian acting under the direction of a

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

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

(c) If no person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the dangerous wild animal shall be disposed of according to the instructions of the court.

*§55.505. Disposition of Carcass, Hide, or Part of Animal, or Product Made From Animal.*

(a) If a person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the Department may destroy, or keep, or place on loan for use in an educational display, a carcass, hide, or part of or product made from a dangerous wild animal.

(b) If no person is convicted of a violation of Chapter 62, Subchapter (F), Parks and Wildlife Code, the carcass, hide, or part of or product made from a dangerous wild animal shall be disposed of according to the instructions of the court, if any, or returned to the person from whom it was seized.

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 25, 1996.

TRD-9604151 Bill Harvey  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Effective date: April 15, 1996

Proposal publication date: February 9, 1996

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

◆ ◆ ◆  
Chapter 157. Fisheries  
Commercially Protected Finish

• 31 TAC §§57.371-57.373

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing held March 14, 1996, adopts amendments to §§57.371-57.373, concerning importation of commercially protected finfish, without changes to the proposed text as published in the December 22, 1996, issue of the *Texas Register* (20 TexReg 10976).

The amendments as adopted remove four species of saltwater fish from the list of commercially protected finfish and implement Senate Bill 733, Acts of the 74th Texas Legislature, 1995.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Parks and Wildlife Code, §66.020 which provides the Parks and Wildlife Commission's authority to regulate the importation of commercially protected finfish.

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 25, 1996.

TRD-9604155 Bill Harvey  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Effective date: April 15, 1996

Proposal publication date: December 22, 1995

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



# TABLES AND GRAPHICS

---

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 16 TAC 13.2013(a)

**§13.2013. CATEGORIES OF LICENSES.  
TABLE 1**

<b>Category</b>	<b>Original Fee</b>	<b>Renewal Fee</b>
15	\$502	\$302
20	\$202	\$102
25	\$502	\$152
30	\$ 52	\$ 37
35	\$502	\$152
40	\$ 77	\$ 37
45	\$ 52	\$ 27
50	\$102	\$ 52

Figure 2: 16 TAC 13.2019(a)(1)

**§13.2019. EXAMINATION AND COURSE OF INSTRUCTION.  
TABLE 1**

Categories of Licenses

	15	20	25	30	35	40	45	50
Company Representative Management Exam	*	*	*	*	*	*	*	*
Operations Supervisor (Branch Manager) Management Exam	*	*	*	*	*	*	*	*
Employee Level - Service & Installation (including Transport Driver and Motor Fuel Dispenser) Exam			*	*	*	*		
Employee Level - Transport Driver Exam			*		*			
Employee Level - Engine Fuel Exam					*		*	*
Employee Level - Service & Installation Exam				*	*			
Employee Level - Motor/Mobile Fuel Dispenser Exam					*	*	*	
File LNG Form 2016	*	*	*	*	*	*	*	*
File LNG Form 2016B					*			
32 Hour Course					*			
One Hour Course		*	*	*		*	*	

Figure 3: 16 TAC 13.2031(a)

§13.2031. INSURANCE REQUIREMENTS.  
TABLE 1

Category of License	Type of Coverage	Insurance Policy Endorsement Required	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	WC42 06 01, Texas Notice of Material Change	LNG Form 2996A	LNG Form 2996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least \$150,000; accidental death benefits in the principal amount of at least \$100,000; loss of limb or sight on a scale based on principal amount of at least \$100,000; loss of income based on at least 60% of employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Employment Commission	N/A	LNG Form 2996A	N/A
30, 40, 45	General liability coverage including: premises and operations in an amount of at least \$25,000 per occurrence and \$50,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LNG Form 2998A	LNG Form 2998B
20, 25, 35, 50	Completed operations in an amount of at least \$300,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LNG Form 2998A	LNG Form 2998B
25, 35	Product liability in an amount of at least \$300,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LNG Form 2998A	LNG Form 2998B
15, 20, 25, 35, 50	General liability coverage: premises and operations including completed operations in an amount of at least \$300,000 per occurrence with a \$300,000 policy aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LNG Form 2998A	LNG Form 2998B
25, 35, Ultimate Consumer	Motor vehicle coverage: minimum \$5,000,000 (\$300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident.	TE0202A, Cancellation Provision or Coverage Change Endorsement	LNG Form 2997A	LNG Form 2997B

Figure: 16 TAC 13.2101(g)(5)

**§13.2101. Uniform Protection Requirements  
Table 1**

Requirements for Signs	LNG Vehicle Dispenser/Refueling Area	Emergency Shutdown Devices	LNG Loading or Unloading Area
Red capital letters at least 2" high on white background: NO SMOKING OR OPEN FLAMES	*		*
Red capital letters at least 4" high on white background: FLAMMABLE GAS			*
Black capital letters at least 4" high on white background: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*
Capital letters at least 2" high FLAMMABLE GAS	*		*
White capital letters at least 2" high on red background: EMERGENCY SHUTDOWN		*	
White capital letters at least 2" high on red background: EMERGENCY PUMP/COMPRESSOR SHUTDOWN		*	
Letters at least 2" high: PRESSURE RELIEF DEVICE SET AT _____			*
Letters at least 4" high: Name of Licensee	*		*

Figure: 16 TAC 13.2513(h)

**§13.2513. Electrical Equipment  
Table 1**

LOCATION	GROUP D, DIVISION	EXTENT OF CLASSIFIED AREA
<b>LNG Storage Container Area</b>		
Indoors	1	Open area between a high-type dike and container wall where dike wall height exceeds distance between dike and container walls.
Outdoors, aboveground containers (other than small containers that are portable and less than 200 gallons aggregate water capacity)	1	Within 15 feet in all directions from container walls and roof, plus area inside a low-type diked or impounding area up to the height of the dike impoundment.
Pits, Trenches or Sumps Located in or Adjacent to Division 1 or 2 Areas	1	Entire pit, trench or sump.
<b>Transport Vehicle and Container Loading and Unloading</b>		
Outdoors in open air at or above grade	1	Within 5 feet in all directions from connections regularly made or disconnected for product transfer.
	2	Between 5 and 15 feet in all directions from a point where connections are regularly made or disconnected, and within the cylindrical volume between the horizontal equator of the sphere and the grade.
Electrical Seals and Vents Specified in Subchapter L of this Title (relating to Instrumentation and Electrical Services)	2	Within 15 feet in all directions from the equipment, and within the cylindrical volume between the horizontal equator and grade.

Figure: 16 TAC 13.2637(a)

§13.2637. Signs and Labeling  
Table 1

Requirements for Signs or Labels	Fueling Connection Receptacle	Engine Compartment
Capital letters at least 2" high (any color letters with contrasting background): LNG FUELED VEHICLE	•	•
Any color letters with contrasting background: Name of Licensee and License Number		•
Any color letters and numbers with contrasting background: Maximum allowable working pressure _____	•	•
Any color letters with contrasting background: Container Capacity _____ Gallons	•	

Figure: 16 TAC 13.2704(a)

**§13.2704. Registration of LNG Transports**  
**Table 1**

Requirement	Initial Registration for Units Not Previously Registered	Transfer of Units Currently Registered	Registration of Unit with Expired Registration
File LNG Form 2007	•	•	•
Pay annual registration fee: transport truck, semitrailer, or other motor vehicle equipped with LNG cargo tank with aggregate water capacity of 5,000 gallons or more	•		•
Pay annual registration fee: transport truck or other motor vehicle equipped with LNG cargo tank with aggregate water capacity of less than 5,000 gallons	•		•
Pay transfer fee		•	
File copy of DOT certification issued by manufacturer or subframer who prepared unit for road use	•		
File LNG Form 2005, Manufacturer's Data Report, upon commission request	•	•	•
File LNG Form 2018B if Form 2004 Decal is destroyed or damaged	•	•	•



TEXAS STATE BOARD OF MEDICAL EXAMINERS  
P.O. Box 2018, MC-263  
Austin, Texas 78768-2018  
[P.O. Box 149134  
Austin, Texas 78714-9134]

MEDICAL PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN.

**PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF MEDICAL EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.**

1. Name and address of insurer: \_\_\_\_\_  
\_\_\_\_\_

2. Defendant physician: \_\_\_\_\_

License number: \_\_\_\_\_

3. Plaintiff's name: \_\_\_\_\_

4. Policy number: \_\_\_\_\_

5. Date claim reported to insurer/self-insured physician: \_\_\_\_\_

6. Type of complaint: \_\_\_\_\_ claim only \_\_\_\_\_ lawsuit

7. Initial reserve amount after investigation: \_\_\_\_\_

(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with T.S.B.M.E.)

\_\_\_\_\_  
Person completing this report

\_\_\_\_\_  
Phone number

Figure 1 22 TAC Section 179.6(i)

**PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH T.S.B.M.E. WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.**

8. Date of disposition: \_\_\_\_\_

9. Type of Disposition:

\_\_\_\_\_ (1) Settlement

\_\_\_\_\_ (2) Judgment after trial

\_\_\_\_\_ (3) Other (please specify) \_\_\_\_\_

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

\$\_\_\_\_\_. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)

11. Appeal, if known: \_\_\_\_ Yes \_\_\_\_ No. If yes, which party: \_\_\_\_\_

\_\_\_\_\_  
Person completing this report

\_\_\_\_\_  
Phone number

## **NOTICE CONCERNING COMPLAINTS**

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants and acupuncturists, may be reported for investigation at the following address:

**Texas State Board of Medical Examiners**

**Attention: Investigations**

**333 Guadalupe, Tower 3, Suite 610**

**P.O. Box 2018, MC-263**

**Austin, Texas 78768-2018**

**[1812 Centre Creek Drive, Suite 300**

**P.O. Box 149134**

**Austin, Texas 78714-9134]**

Assistance in filing a complaint is available by calling the following telephone number:

**1-800-201-9353**

## **AVISO SOBRE QUEJAS**

Se pueden presentar quejas acerca de médicos, así también como de otras personas autorizadas y registradas por la Junta de Examinadores Médicos del Estado de Texas (Texas State Board of Medical Examiners), incluyendo a ayudantes médicos y acupunturistas, para su investigación, en la siguiente dirección:

**Texas State Board of Medical Examiners**

**Attention: Investigations**

**333 Guadalupe, Tower 3, Suite 610**

**P.O. Box 2018, MC-263**

**Austin, Texas 78768-2018**

**[1812 Centre Creek Drive, Suite 300**

**P.O. Box 149134**

**Austin, Texas 78714-9134]**

Se puede obtener ayuda para presentar una queja llamando al siguiente número telefónico:

**1-800-201-9353**

**FIGURE NO. 1: 28 TAC §3.520**

<u>Form Number</u>	<u>Figure Number</u>	<u>Description</u>
<u>369SC-BP</u>	<u>1</u>	<u>Standard Conversion Policy Benefit Package</u>
<u>369CONV-ADB</u>	<u>2</u>	<u>Alcohol and Drug Abuse Benefit Rider</u>
<u>369CONV-MHB</u>	<u>3</u>	<u>Mental Health Benefit Rider</u>
<u>369CONV-RX</u>	<u>4</u>	<u>Prescription Drug Benefit Rider</u>
<u>369IHC-BP</u>	<u>5</u>	<u>In-Hospital Conversion Policy Benefit Package</u>
<u>369BC-BP</u>	<u>6</u>	<u>Basic Conversion Policy Benefit Package</u>
<u>369LIHC-BP</u>	<u>7</u>	<u>Lesser In-Hospital Conversion Policy Benefit Package</u>
<u>369SC</u>	<u>8</u>	<u>Standard Conversion Policy Face Page</u>
<u>369BC</u>	<u>9</u>	<u>Basic Conversion Policy Face Page</u>
<u>369IHC</u>	<u>10</u>	<u>In-Hospital Conversion Policy Face Page</u>
<u>369LIHC</u>	<u>11</u>	<u>Lesser In-Hospital Conversion Policy Face Page</u>
<u>TOLLFREE</u>	<u>12</u>	<u>Toll Free Notice</u>
<u>369CONV-DP</u>	<u>13</u>	<u>Data Page</u>
<u>369CONV-TC</u>	<u>14</u>	<u>Table of Contents</u>
<u>369CONV-GP</u>	<u>15</u>	<u>General Provisions</u>
<u>369CONV-SP</u>	<u>16</u>	<u>Standard Provisions</u>
<u>369CONV-CERT</u>	<u>17</u>	<u>Conversion Prototype Certification</u>
<u>369CCPRO</u>	<u>18</u>	<u>Group Mandatory Conversion Provision</u>

**Figure 1: 30 TAC §293.34**

**Request for Consideration of Appointment  
as Director Instructions**

The following form must be filed with the chief clerk of the commission prior to consideration for appointment. Answer each question or request in complete detail and in writing. Sign your answers to the questions or requests and swear to the truth of your responses before a Notary Public.

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_  
Name of District \_\_\_\_\_  
State of Texas: \_\_\_\_\_  
County of \_\_\_\_\_:

Before me, the undersigned authority of the State and County aforesaid, on this day personally appeared \_\_\_\_\_ who desires to be appointed as director of \_\_\_\_\_ to serve until his successor is elected or appointed.

(1) State whether you are 18 or 21 years old (as applicable to the type of district), a resident citizen of Texas, and either own land subject to taxation in the district or are a qualified voter within the district. If applying for director of a Regional District for Water, [Sanitary Sewer] Wastewater, and [Wastewater] Drainage, you are not required to state whether you own land or are a qualified voter within the district. If applying for director of a Special Utility District, state whether you are a resident citizen of this state and whether you either own land subject to taxation in the district, are a user of the facilities of the district, or are a qualified voter of the district. If applying for director of a Stormwater Control District, state whether you reside within the boundaries of the proposed district, but you are not required to state whether you own land or are a qualified voter within the district.

(2) State whether you are a developer of property in the district, related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district, or [are or were within the two years immediately preceding this proposed appointment an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district.] other person providing professional services to the district.

(3) State your present occupation and employment. Is this your main source of income? If not, please explain.

(4) State whether you plan to live in the district. If you do not plan to live in the district, what are your plans for the use and disposition of the land? Not applicable if applying for director of a Regional District for Water, [Sanitary Sewer] Wastewater, and [Wastewater] Drainage.

(5) Do you, or your employer, have any business or other connections with any developer of the proposed district, the attorney representing the proposed district, or the consulting engineer for the proposed district or developer? If so, please explain.

(6) Are you aware that the district is a public entity and that by law notice of its meetings must be given and the meeting must be open to the public and its records shall be available for public inspection at all reasonable times?

(7) Are you aware that the district is subject to the continuing supervision of the commission and will you fully cooperate with the commission?

(8) Do you affirm that you will faithfully execute the duties of the office of director of the district of the State of Texas, and will to the best of your ability preserve, protect, and defend the constitution and laws of the United States and of this state; do you affirm that you have not directly nor indirectly paid, offered or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment as a reward to secure your appointment?

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ who desires to be appointed as director of \_\_\_\_\_ to serve until his successor is elected or appointed, and who being by me duly sworn on his oath deposed and said that every response and statement set forth herein is true and correct.

Signature \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_ County, Texas

**Figure 1: 30 TAC §293.56**

**ROCK OF GIBRALTAR BANK  
LETTER OF CREDIT**

**GREEN ACRES MUNICIPAL  
UTILITY DISTRICT  
ONE HOLLOW LOG LANE  
MEGALOPOLIS, TEXAS 77000**

**Irrevocable Credit No. 1  
Amount: \$250,000**

**GENTLEMEN:**

You are hereby authorized to value on ROCK OF GIBRALTAR BANK for account of ALL AMERICAN HOMES, INC. up to an aggregate amount of ----- TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ----- available by your drafts at ----- SITE ----- to be accompanied by the original of this letter of credit and the following documents:

1. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes Inc. has failed to construct streets in Knot Holes West Subdivision in accordance with the terms of the [Utility/] Street and [road] Utility Construction Agreement dated December 1, 1980. (Required only for draft No. 1), and a written certification(s) by the engineer for Green Acres Municipal Utility District that payment is due to the contractor for construction of streets in Knot Holes West Subdivision in the amount shown on the draft(s); or

2. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes, Inc. has failed to renew or replace this letter of credit within forty-five (45) days prior to its expiration date; or

3. Written statement signed by the President or Vice president of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more) that All American Homes, Inc. has commenced any proceeding, voluntary or involuntary, or that any proceeding has been commenced against All American Homes, Inc. involving bankruptcy, insolvency, reorganization, liquidation or dissolution of All American Homes, Inc., that any receiver has been appointed by All American Homes, Inc., or that All American Homes, Inc. has made a general assignment for the benefit of creditors.

Multiple drafts may be presented.

Drafts must be presented to drawee bank not later than May 31, 1983, all drafts must state on their face "DRAWN UNDER ROCK OF GIBRALTAR BANK IRREVOCABLE CREDIT NO. 1".

We hereby engage with you, that all drafts drawn under and in compliance with the terms of this credit will be duly honored, if drawn and presented for payment at our office in Megalopolis, Texas, on or before the expiration date of this credit.



We further engage with you that without further notice, if so requested by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District (or Collateral Agent if LOC is for \$100,000 or more), we shall deposit in a special account in the name of the district, the remaining face amount of the letter of credit if the letter of credit is:

- (1) not renewed for an additional year at least 45 days prior to its date of expiration;
- (2) not called upon in its entirety at least [45] 30 days prior to its date of expiration;
- (3) not found to be unnecessary by the executive director of the Texas Natural Resource Conservation Commission at least 45 days prior to its date of expiration; or
- (4) unless the construction project has been completed as certified by the district's engineer at least 45 days prior to its date of expiration.

Very truly yours,  
Authorized Signature

Figure 1: 30 TAC §293.57

STREET AND UTILITY [ROAD] CONSTRUCTION AGREEMENT

THE STATE OF TEXAS  
COUNTY OF TRAVIS

THIS AGREEMENT is made and entered into as of this 1st day of December, 1980, by and between GREEN ACRES MUNICIPAL UTILITY DISTRICT of Travis County, Texas (the "District") and ALL AMERICAN HOMES, INC. (the "Developer").

Recital

The Developer is developing 300 lots in the Knot Holes West Subdivision which is located within the District. The District is preparing to sell its \$3,500,000 Waterworks and Wastewater [Sewer] Systems Combination Tax and Revenue Bonds, Series 1980 (the "Bonds") for the purpose of acquiring and/or constructing water, sewage, and drainage facilities to serve the Knot Holes West Subdivision. In order for the District's taxable valuations to increase to a level to support the debt service requirements on the Bonds, the Developer must complete the streets and utilities [road] to service its 300 lots in the Knot Holes West Subdivision in the District. The purpose of this Agreement is to assure the District that the Developer will construct all streets and utilities [roads] to serve its 300 lots in the Knot Holes West Subdivision.

WITNESSETH

Green Acres Municipal Utility District and All American Homes, Inc. do hereby agree as follows:

1. The District agrees to proceed with the sale of the Bonds in accordance with the Order of the Texas Natural Resource Conservation [Texas Water] Commission approving the Bonds and all applicable laws in an expeditious manner.
2. The District agrees that it will use the proceeds from the sale of such Bonds in accordance with the Order of the commission approving the Bonds, including reimbursement to the Developer of funds advanced to or on behalf of the District.
3. The Developer agrees that it will cause the completion of all streets and pay its share of costs associated with the water, wastewater and drainage construction [roads] to serve Developer's 300 lots within the Knot Holes West Subdivision in accordance with the plans and specifications prepared by ABC Engineers, Inc. and approved by the City of Megalopolis and Travis County not later than May 31, 1982.
4. The costs to construct the streets and pay its share of cost associated with the water, wastewater and drainage construction, including engineering and contingencies [roads] to serve Developer's 300 lots in the Knot Holes West Subdivision are estimated to be \$250,000.00. To assure the District and the Commission that adequate funds will be available to the District in the event that All American Homes, Inc. fails to construct the streets and utilities [roads] in accordance with the Agreement, the Developer will secure a letter of credit from ROCK OF GIBRALTAR BANK, Megalopolis, Texas in

the amount shown above in favor of the District which shall provide that in the event the Developer fails to construct the streets and utilities [roads] in accordance with the terms and conditions of this Agreement that the District shall have the right to award and/or to assume existing construction contracts for the completion of the streets and utilities [roads] and to draw on the letters of credit for the purpose of making all payments due on the construction contracts for the streets and utilities [roads]; provided, however, the District shall not proceed in such a manner until the Commission has reviewed the matter and approved the District awarding the contract(s) or assuming existing contract(s) and utilizing the letter of credit. Such draw on a letter of credit shall be accompanied by an approved pay estimate by the District's engineer certifying that the amount is in order for payment. In addition, in the event that the letter of credit has not been renewed or replaced forty-five (45) days prior to its expiration date, the District shall have the right to draw down the lesser of the current cost, as estimated by the District's engineer, to construct the streets and utilities [roads], or the entire remaining balance of a letter of credit. In the event that the Developer commences any proceeding voluntary or involuntary, or any proceeding is commenced against the Developer involving the bankruptcy, insolvency, reorganization, liquidation, or dissolution of the Developer, or the Developer makes a general assignment for the benefit of creditors, the District shall have the immediate right to draw down the lesser of the current cost, as estimated by the District's engineer, to construct the streets and utilities [roads], or the entire remaining balance of the letter of credit. The current estimated cost to construct the streets and utilities [roads] shall include construction contract amounts, engineering, surveying and testing fees and a 10% contingency. The District shall deposit such funds in a separate account and shall not commit or expend such funds until the Executive Director has [Commission has held the hearing and] authorized use of the funds as provided above. Within thirty (30) days after final completion of the streets and utilities [roads], the District shall provide an accounting of the use of funds drawn pursuant to the provisions hereof and shall refund any remaining funds, including accrued interest, if any, to the Developer or his designee. In the event that a letter of credit is not sufficient to pay the entire cost of constructing the streets and utilities [roads], the Developer shall be liable to the District for any costs in excess of the amount of the letter of credit.

5. Upon completion of the streets and utilities [roads] to serve Developer's 300 lots in the Knot Holes West Subdivision in accordance with this agreement, the District, upon written request by Developer and certification of completion by the District's engineer, shall authorize cancellation of the letter of credit for that section.

6. Developer and District agree that this agreement is being entered into for the purpose of complying with the condition provided in the Commission's Order to permit the District to advertise for the sale of Bonds in compliance with the Commission's Order and in accordance with §293.47(g) of this title (relating to Thirty Percent of District Construction Cost to be Paid by Developer) and as an inducement to the District to issue the Bonds.

Executed in multiple copies on the date shown above.

OF TRAVIS COUNTY, TEXAS

GREEN ACRES MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

ALL AMERICAN HOMES, INC.

By: \_\_\_\_\_

Title \_\_\_\_\_

**Figure 1: 30 TAC §293.59 (h)(1)**

$$\text{equivalent tax rate} = \frac{\text{monthly surcharge} \times 12 \times 100}{\text{average house price}}$$

**Figure 2: 30 TAC §293.59 (h)(2)**

total annual surcharge revenues

$$\text{equivalent tax rate} = \frac{\text{total annual surcharge revenues at projected build out} \times 100}{\text{total assessed value of district at buildout}}$$

**Figure 3: 30 TAC §293.59(i)**

$$\frac{(\text{total amount rebated by entity to district}) \times 100}{\text{certified assessed value of district}}$$

**Figure 1: 30 TAC §293.103**

**NOTICE OF NAME CHANGE OF BASS FISHERMAN'S MUNICIPAL  
UTILITY DISTRICT TO JOY COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 1**

Notice is hereby given that Bass Fisherman's Municipal Utility District obtained approval of the Texas Natural Resource Conservation Commission on January 1, 1996 to change its name to Joy County Municipal Utility District No. 1. This change takes effect immediately. This change does not affect any outstanding bonds, obligations, or other indebtedness of the District. Any questions concerning the change should be directed to the District's manager, \_\_\_\_\_, at (a/c) phone number, or the District's attorney, \_\_\_\_\_, at (a/c) phone number.

**Figure 1: 30 TAC §293.180(d)**

**[NOTICE ON A PUBLIC HEARING FOR CONSIDERATION OF  
AN APPEAL OF A DECISION OF THE BOARD OF  
\_\_\_\_\_ MUNICIPAL UTILITY DISTRICT**

[Notice is hereby given that a Public Hearing will be held at \_\_\_\_ o'clock, on \_\_\_\_\_, before an examiner of the Texas Natural Resource Conservation Commission (the "Commission"), in Room \_\_\_\_\_ of (Building Name), (address), Austin, Travis County, Texas, to consider a Petition Appealing a Decision of the Board of \_\_\_\_\_ District (the "District") shown in Exhibit A. The petition is filed and the hearing is held under the authority of V.T.C.A., Water Code Chapter 54, 31 Texas Administrative Code, Section 293.180 and under the procedural rules of the Commission.

[The decision appealed was \_\_\_\_\_  
(state decision of the board).

[All affected persons who wish to appear at the hearing and to discuss any factors relevant to the petition are urged to do so. Affected persons appearing at the hearing may be granted party status and thereby have the opportunity to present evidence and cross-examine the witnesses of each party. Persons wishing to present information should appear in person or by a representative. Any person who appears at the hearing and who represents more than himself or herself should have available at the hearing a list of those persons he or she represents. Information offered in written form without the writer's presence will be noted but will not be considered as evidence since the right to cross-examine is absent.

[The record in this proceeding will include sworn testimony and other evidence taken at the public hearing, if necessary. The hearing may be continued from time to time and place to place, if necessary, to develop all relevant evidence bearing on the subject of the hearing.

[Information concerning any procedures of the hearing may be obtained by contacting Kerry Sullivan, Assistant Chief Hearings Examiner, at Office of Hearings Examiners, P.O. Box 13087, Austin, Texas, 78711, or by calling (512) 463-7875. Information concerning public participation in the hearing may be obtained by contacting the Public Interest Counsel at the same address or by calling (512) 908-6363. Information may also be obtained from \_\_\_\_\_, Staff Attorney, at the same address or by calling (512) 463-8069.

[Persons with disabilities who plan to attend this hearing 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 the Office of Hearings Examiners at (512) 463-7875 or 1-800-RELAY-TX (TDD) at least two (2) work days prior to the hearing so that appropriate arrangements can be made.

[Issued this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Gloria A. Vasquez, Chief Clerk

(Seal)]

Figure: 31 TAC §15.2

A local government is not authorized to issue a permit or certificate authorizing construction or operation of the industrial facilities listed in this appendix within critical dune areas or seaward of a dune protection line, as provided in §15.4(c)(5) of this title (relating to Dune Protection Standards), with the exception of activities in Part 1, Division D, Major Group 20, Industry Group 209, Industry Numbers 2091 and 2092, as provided in the definition of "industrial facilities" in §15.2 of this title (relating to Definitions). This appendix is taken from the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.).

DIVISION D. MANUFACTURING

Major Group 20.	Food and kindred products, except Industry Numbers 2091 and 2092
Major Group 21.	Tobacco products
Major Group 22.	Textile mill products
Major Group 23.	Apparel and other finished products made from fabrics and similar materials
Major Group 24.	Lumber and wood products, except furniture
Major Group 25.	Furniture and fixtures
Major Group 26.	Paper and allied products
Major Group 27.	Printing, publishing, and allied industries
Major Group 28.	Chemicals and allied products
Major Group 29.	Petroleum refining and related industries
Major Group 30.	Rubber and miscellaneous plastics products
Major Group 31.	Leather and leather products
Major Group 32.	Stone, clay, glass, and concrete products
Major Group 33.	Primary metal industries
Major Group 34.	Fabricated metal products, except machinery and transportation equipment
Major Group 35.	Industrial and commercial machinery and computer equipment
Major Group 36.	Electronic and other electrical equipment and components, except computer equipment
Major Group 37.	Transportation equipment
Major Group 38.	Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks
Major Group 39.	Miscellaneous manufacturing industries



Figure: TAC 31 \$15.2 (continued)

DIVISION E. TRANSPORTATION, COM-  
MUNICATIONS, ELECTRIC, GAS,  
HAND SANITARY SERVICES

Major Group 49. Sanitary services (sewerage systems, refuse systems, sanitary services not elsewhere classified)

MISCELLANEOUS FOOD PREPARATIONS  
HAND KINDRED PRODUCTS

Industrial facilities listed in Industry Number 2091 are not considered "industrial facilities" as defined in \$15.2 of this title (relating to Definitions).

2091 Canned and Cured Fish and Seafoods

Establishments primarily engaged in cooking and canning fish, shrimp, oysters, clams, crabs, and other seafoods, including soups; and those engaged in smoking, salting, drying, or otherwise curing fish and other seafoods for the trade. Establishments primarily engaged in shucking and packing fresh oysters in nonsealed containers, or in freezing or preparing fresh fish, are classified in Industry 2092.

- Canned fish, crustacea, and mollusks
- Caviar, canned
- Chowder, fish and seafood: canned
- Clam bouillon, broth, chowder, juice: bottled or canned
- Codfish: smoked, salted, dried and pickled
- Crab meat, canned and cured
- Finnan haddie (smoked haddock)
- Fish and seafood cakes: canned
- Fish egg bait, canned
- Fish, canned and cured
- Fish: cured, dried, pickled, salted, and smoked
- Herring: smoked, salted, dried, and pickled
- Mackerel: smoked, salted, dried, and pickled
- Oysters, canned and cured
- Salmon: smoked, salted, dried, canned, and pickled
- Sardines, canned
- Seafood products, canned and cured
- Shellfish, canned and cured
- Shrimp, canned and cured
- Soups, fish and seafood: canned
- Stews, fish and seafood: canned
- Tuna fish, canned

Figure: TAC 31 §15.2 (continued)

MISCELLANEOUS FOOD PREPARATIONS  
HAND KINDRED PRODUCTS

Industrial facilities listed in Industry Number 2092 are not considered "industrial facilities" as defined in §15.2 of this title (relating to Definitions).

2092 Prepared Fresh or Frozen  
Fish and Seafoods

Establishments primarily engaged in preparing fresh and raw or cooked frozen fish and other seafoods and seafood preparations, such as soups, stews, chowders, fishcakes, crabcakes, and shrimpcakes. Prepared fresh fish are eviscerated or processed by removal of heads, fins, or scales. This industry also includes establishments primarily engaged in the shucking and packing of fresh oysters in nonsealed containers.

- Chowders, fish and seafood: frozen
- Crabcakes, frozen
- Crabmeat picking
- Crabmeat, fresh: packed in nonsealed containers
- Fish and seafood cakes, frozen
- Fish Fillets
- Fish sticks
- Fish: fresh and frozen, prepared
- Oysters, fresh: shucking and packing in nonsealed containers
- Seafoods, fresh and frozen
- Shellfish, fresh and frozen
- Shellfish, fresh: shucked, picked, or packed
- Shrimp, fresh and frozen
- Soups, fish and seafood: frozen
- Stews, fish and seafood: frozen

Figure 1: 31 TAC §65.72(b)(2)(B)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	3	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass,	5 (in any combination)	14	No limit
Spotted and Guadalupe bass.		12	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30
Drum, red.	3*	20	28*
<p>*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.</p>			
Flounder: all species, their hybrids, and subspecies.	10	14	No limit
<p>*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder.</p>			
Jewfish.	0		
Mackerel, king.	2	23	No limit
Mackerel, Spanish.	7	14	No limit
Marlin, blue.	No limit	114	No limit

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Marlin, white.	No limit	81	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	76	No limit
Saugeye	3	18	No limit
Seatrout, spotted.	10	15	No limit
Shark: all species, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Sheepshead.	5	12	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	5	15	No limit
Snapper, vermilion.	No limit	8	No limit
Snook.	1	24	28
Tarpon.	0		Catch and release only*.
*Special Regulation: One tarpon 80 inches in length or larger may be retained during a license year when affixed with a properly executed Tarpon Tag.			
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Walleye.	5	16	No limit

Figure 2: 31 TAC §65.72(b)(2)(C)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson)	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination)	14	Possession Limit is 10.
Bass: largemouth.			
Lakes Brownwood (Brown), Coleman (Coleman), Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Lost Creek (Jack), Champion Creek (Mitchell), and Ratcliff (Houston).	5	16	
Lakes Fairfield (Freestone), San Augustine City (San Augustine), Ray Roberts (Denton, Cooke, and Grayson), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Madisonville (Madison), Bright (Williamson), Cooper (Delta and Hopkins), Alan Henry (Garza), Aquilla (Hill), Athens (Henderson), Bellwood (Smith), Casa Blanca (Webb), Old Mount Pleasant City (Titus), Rusk State Park (Cherokee), Welsh (Titus), and Braunig (Bexar).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release only.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Purtis Creek State Park Lake (Henderson and Van Zandt), Gibbons Creek Reservoir (Grimes), and Raven Walker.	0	No Limit	Catch and release only except that any bass 22 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the Share A Lunker Program.
Lakes Pinkston (Shelby), Waxahachie (Ellis), Bridgeport (Jack and Wise), Weatherford (Parker), Georgetown (Williamson), Tyler State Park (Smith), Striker (Rusk), Caddo Marion and Harrison), Burke-Crenshaw (Harris), Grapevine (Denton and Tarrant), and Davy Crockett (Fannin).	5	14-18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Bastrop (Bastrop), Houston County (Houston) Nacogdoches (Nacogdoches), Fork (Wood, Rains and Hopkins), Monticello (Titus), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant), Walter E. Long (Travis), and Timpson (Shelby).	5	14-21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Fayette County (Fayette)	5	14-24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Belton (Bell and Coryell), Cisco (Eastland), Greenbelt (Donley), Oak Creek (Coke), Stillhouse Hollow (Bell), White River (Crosby), Whitney (Bosque, Hill and Johnson), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12-15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5 (in any combination)	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped bass 20 inches or greater in length may be retained each day. Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.

# TABLES AND GRAPHICS

---

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation,

Graphic Material will not be reproduced in the Acrobat version of this issue of the Texas Register due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.



<u>Location (County)</u>	<u>Daily Bag</u>	<u>Minimum Length (Inches)</u>	<u>Special Regulation</u>
<b>Bass, white.</b>			
Lakes Conroe, Livingston, Limestone, Palestine, Somerville, Buchanan, Canyon, Georgetown, Inks, Lyndon B. Johnson, Marble Falls, and Travis.	25	12	
<b>Catfish: blue.</b>			
Lakes E. V. Spence (Coke) and Fort Phantom Hill (Jones)	5	18	
<b>Catfish: channel and blue catfish, their hybrids, and subspecies.</b>			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Community fishing lakes, Bellwood (Smith), Dixieland (Cameron), and Bell Street (Tom Green).	5 (in any combination)	12	
<b>Catfish: flathead</b>			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
<b>Crappie: black and white crappie, their hybrids and subspecies.</b>			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	No Limit	Possession limit is 50.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
<b>Drum, red.</b>			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
<u>Location (County)</u>	<u>Daily Bag</u>	<u>Minimum Length (Inches)</u>	<u>Special Regulation</u>
<b>Shad: gizzard and threadfin shad.</b>			
The Trinity River below Lake Livingston between Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
<b>Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.</b>			
Purtis Creek State Park Lake (Henderson and Van Zandt).	25 (in any combination)	7	
<b>Trout: Rainbow and brown trout, their hybrids, and subspecies.</b>			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	3	16	

# 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

**Monday, June 24, 1996, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits on remand is scheduled for the above date and time in the following docket: SOAH Docket Number 473-95-1181; PUC Docket Number 7952-complaint of Metro-Link Telecom, Inc. against Southwestern Bell Telephone Company

**Contact:** J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

**Filed:** March 28, 1996, 3:56 p.m.

TRD-9604373



## Texas Department of Agriculture

**Thursday, April 25, 1996, 10:30 a.m.**

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

AGENDA:

Alleged violation of Texas Agriculture Code Annotated, §§103.001-103.015 (Vernon Supplement 1996) by D and L Produce Company, Incorporated as petitioned by Tex-Sandia, Incorporated.

**Contact:** Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

**Filed:** March 27, 1996, 3:05 p.m.

TRD-9604325

**Thursday, April 25, 1996, 1:30 p.m.**

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

AGENDA:

Alleged violation of Texas Agriculture Code Annotated, §§103.001-103.015 (Vernon Supplement 1996) by Produce Marketing Company, as petitioned by Cargil Produce Company.

**Contact:** Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

**Filed:** March 27, 1996, 3:05 p.m.

TRD-9604324



## Texas Commission on Alcohol and Drug Abuse

**Thursday, April 11, 1996, 1:30 p.m.**

6451 Boeing, Texas Department of Human Services, Conference Room 47

El Paso

Regional Advisory Consortium (RAC), Region 10

AGENDA:

Call to order; introduction of RAC members; approval of February 29, 1996 minutes; ABC's of community assessment information; substance abuse services/funding priorities; nomination/section: co-convenor and recorder; needs assessment ad-hoc committee appointments; scheduling of next meeting; and adjournment.

**Contact:** Jose Salas, 6451 Boeing, El Paso, Texas 79925, (915) 783-8660.

**Filed:** March 27, 1996, 11:12 a.m.

TRD-9604290

**Thursday, April 18, 1996, 10:00 a.m.**

1101 North Whitaker, Permian Basin Regional Council on Alcohol and Drug Abuse, Conference Room

Odessa

Regional Advisory Consortium (RAC), Region 9

AGENDA:

Call to order; introduction of RAC members; approval of February 22, 1996 minutes; ABC's of community assessment information; substance abuse services/funding priorities; needs assessment ad-hoc committee appointments; scheduling of next meeting; and adjournment.

**Contact:** Jose Salas, 6451 Boeing, El Paso, Texas 79925, (915) 783-8660.

**Filed:** March 27, 1996, 11:12 a.m.

TRD-9604291

◆       ◆       ◆

## Texas Council on Alzheimer's Disease and Related Disorders

**Thursday, April 18, 1996, 10:00 a.m.**

Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of minutes from the last meeting; Alzheimer's Care Team and Respite Program; Texas Department of Human Services Adopt a Nursing Home Program; research updates; Special Care Unit education update; Alzheimer's Regional Conference; and legislative issues.

**Contact:** Veronda Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. 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 29, 1996, 4:03 p.m.

TRD-9604461

◆       ◆       ◆

## Texas State Board of Examiners of Professional Counselors

**Thursday, April 4, 1996, 9:00 a.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: informal settlement conference with G.L.; agreed order relating to the license of G.L.; informal settlement conference with M.A.F.; agreed order relating to the license of M.A. F.; petition for rule change submitted by the Texas Counseling Association; pending complaints (93-C002; 93-C021; 94-C008; 94-C034; 94-C042; 94-C058; 94-C074; 94-C079; 94-C118; 95-C012; 95-C016 through 95-C018; 95-C021; 95-C031; 95-C034; 94-C040; 95-C046; 95-C049; 95-C050; 95-C055; 95-C058; 95-C062; 95-C-65; 95-C069; 95-C070; 95-C075;

95-C076; 95-C080; 95-C082 through 95-C084; 95-C087; 95-C090; 95-C092; 95-C095; 95-C098; 95-C100; 96-C009; 96-C012 through 96-C019; 96-C021 through 96-C-023; 96-C025 through 96-C032; 96-C035 through 96-C037; 96-C041; 96-C044 through 96-C054; and 96-C056 through 96-C058) .

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604315

**Friday, April 5, 1996, 8:00 a.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Testing and Continuing Education Committee

AGENDA:

The committee will discuss and possibly act on: amendments to 22 Texas Administrative Code, Subchapter K relating to continuing education requirements and procedures; update from the Ad Hoc Testing Committee concerning the Texas licensed professional counselor examination; and request from Cynthia Veliz relating to the examination.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604318

**Friday, April 5, 1996, 9:30 a.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Rules Committee

AGENDA:

The committee will discuss and possibly act on: petition for rule change submitted by Elizabeth T. Frisby; comments to proposed amendments to 22 Texas Administrative Code, Chapter 681 published in the March 1, 1996, *Texas Register* (21 TexReg 1648); final adoption of amendments to 22 Texas Administrative Code, Chapter 681; proposed amendments to 22 Texas Administrative Code, Chapter 681; request for special accommodation from Jennifer Redfield regarding the supervisor training requirements; letter from the Commission on Certification of Work Related Adjustment and Vocational Evaluation Specialists (CCWAVES); and petition for rule change submitted by TCA.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604319

**Friday, April 5, 1996, 12:30 p.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Public and Professional Relations Committee

AGENDA:

The committee will discuss and possibly act on the May 1996 newsletter (review of draft newsletter; and discussion of additional topics).

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604320

**Friday, April 5, 1996, 1:30 p.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Applications Committee

AGENDA:

The committee will discuss and possibly act on: applications or requests of applicants (J.K.; L.M.G.; and others); request from Oscar Perez to accept a college supervision course as meeting the supervisor training requirements; and request from William Rogers to accept his doctorate degree from a Columbia Pacific University in California.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604316

**Friday, April 5, 1996, 3:00 p.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Administration and Finance Committee

AGENDA:

The committee will discuss and possibly act on: review of board office operations including policies, procedures, and personnel (budgeting for support staff of the Professional Licensing and Certification Division); and finances (financial report through March 31, 1996; conference attendance; and recommendations for travel).

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604321

**Saturday, April 6, 1996, 9:00 a.m.**

Capitol Extension Building, 112 East 11th Street, Room E2.036

Austin

AGENDA:

The board will discuss and possibly act on: approval of the minutes from the February 10, 1996 meeting; election of vice-chair; persons who wish to appear before the board; board order relating to R.H.O.; proposal for decision relating to B.B.; board order relating to B.B.;

appreciation resolution for Linda Wiegman; applications committee report (applications or requests of applicants (J.K.; L.M.G.; and others); request from Oscar Perez to accept a college supervision course as meeting the supervisor training requirements; and request from William Rogers to accept his doctorate degree from a Columbia Pacific University in California); complaints committee meeting (agreed order relating to the license of G.L.; agreed order relating to the license of M.A.F. ; petition for rule change submitted by Texas Counseling Association (TCA); and report from the February 10, 1996 and April 4, 1996 committee meetings); testing and continuing education committee report (amendments to 22 Texas Administrative Code, Subchapter K relating to continuing education requirements and procedures; update from the Ad Hoc Testing Committee concerning the Texas licensed professional counselor examination; and request from Cynthia Veliz relating to the examination); rules committee report (petition for rule change submitted by Elizabeth T. Frisby; comments to proposed amendments to 22 Texas Administrative Code, Chapter 681 published in the March 1, 1996, *Texas Register* (21 TexReg 1648); final adoption of amendments to 22 Texas Administrative Code, Chapter 681; proposed amendments to 22 Texas Administrative Code, Chapter 681; request for special accommodation from Jennifer Redfield regarding the supervisor training requirements; letter from the Commission on Certification of Work Related Adjustment and Vocational Evaluation Specialists (CCWAVES); and petition for rule change submitted by TCA); administration and finance committee report (review of board office operations including policies, procedures, and personnel (budgeting for support staff of the Professional Licensing and Certification Division); and finances (financial report through March 31, 1996; conference attendance; and recommendation(s) for travel)); and public and professional relations committee (May 1996 newsletter (review of draft newsletter; and discussion of additional topics)); and setting future meeting date(s).

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

**Filed:** March 27, 1996, 1:26 p.m.

TRD-9604317

◆ ◆ ◆  
**Credit Union Department**

**Thursday, April 11, 1996, 2:00 p.m.**

Credit Union Department Building, 914 East Anderson Lane

Austin

Legislative Advisory Committee for the Credit Union Commission

AGENDA:

To invite: public input for future consideration. To receive: update of status on Sunset review; presentation by the Texas Credit Union League; pending congressional legislation (S 711/HR 1998). To consider: actions on the report of the Task Force Advisory Committee (1994); establish tentative date for next committee meeting.

**Contact:** James W. Ratzman, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

**Filed:** March 29, 1996, 10:18 a.m.

TRD-9604403

**Friday, April 12, 1996, 10:00 a.m.**

Credit Union Department Building, 914 East Anderson Lane

Austin  
Credit Union Commission  
AGENDA:

To invite: public input for future consideration. To receive: minutes of January 9, 1996, commission meeting; communications; and committee reports from the Texas Share Guaranty Credit Union (TSGCU) Oversight Committee, and Legislative Advisory Committee; update of accreditation process; and presentation by the Texas Ethics Commission. To consider: adopting amendment to standard review §4.04(b); GAAP requirements for small credit union; merger requirements; approval of draft strategic plan (1997-2001); TCUL State Credit Union meeting; review of the annual financial report; vote on matters discussed in executive session, if necessary; and set date for next commission meeting. To elect: Credit Union Commission officers. To conduct: an executive session to discuss credit unions and problem cases; to consult with legal counsel regarding contemplated legal action, and existing litigation and administrative actions.

**Contact:** James W. Ratzman, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

**Filed:** March 29, 1996, 11:14 a.m.

TRD-9604405

◆ ◆ ◆  
**Texas Commission for the Deaf and Hard of Hearing**

**Friday, April 12, 1996, 9:00 a.m.**

Brown-Heatly Building, Room 7230, 4900 North Lamar Boulevard  
Austin  
Board

AGENDA:

Call to order; approval of minutes of February 16, 1996 meeting; election of vice chair; executive director's report, including deafness task force and membership and other task force membership; direct services report, including approval of requests for proposals; BEI report, including certifications, adoption of fee schedule for 183.573, final approval for 183.501 and 183.505, proposed rule changes for 183.501 and 183.511, and approval for level III video production; information items; and adjournment.

**Contact:** Margaret Susman, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

**Filed:** March 28, 1996, 11:19 a.m.

TRD-9604350

◆ ◆ ◆  
**Texas Planning Council for Developmental Disabilities**

**Wednesday-Thursday, April 3-4, 1996, 3:30 p.m. and 8:30 a.m., respectively.**

Sheraton Austin Hotel, 500 North IH-35 at Sixth Street, Sabine Room

Austin

Revised Agenda

Advocacy and Public Information Committee

AGENDA:

Wednesday, April 3, 1996

3:30 p.m.-Call to order

I. Introduction and public comments

II. Approval of minutes

III. Discussion of federal policy

A. DD appropriations and reauthorization

B. IDEA reauthorization

C. PASS moratorium

D. Other federal legislation

IV. Discussion of state policy/legislation

A. Interim Committee on Offenders with Mental Disabilities

B. HMO rules update

C. Update on Medicaid waivers

D. Update on education rules

E. Managed care pilots

F. Other state policy issues

V. Discussion of draft position statements and revisions

VI. Public information report

5:30 p.m.-Recess

Thursday, April 4, 1996

8:30 a.m.-I. Continuation of unfinished business from the previous day

2:00 p.m.-Adjourn

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 Marilyn Simpson at (512) 483-4085.

**Contact:** Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

**Filed:** March 27, 1996, 1:45 p.m.

TRD-9604322

◆ ◆ ◆  
**Advisory Commission on State Emergency Communications**

**Friday, April 5, 1996, 11:00 a.m.**

333 Guadalupe, Room 1250A

Austin

Poison Center Coordinating Committee Meeting

AGENDA:

The committee will call to the meeting to order and recognize guests; hear public comment; hear reports, discuss and take commission action, as necessary: approval of March 8, 1996 committee meeting minutes; roundtable; Subcommittee reports-A. Operations, B. Medical Directors, C. Public Education; mission statement; TDH Food and Drug Division, VISIT/PNR update and discussion; other business; set next meeting date; adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

**Contact:** Jim Goerke, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6911.

**Filed:** March 27, 1996, 2:19 p.m.

TRD-9604323

◆ ◆ ◆  
**State Employee Charitable Campaign**

**Thursday, April 9, 1996, 3:00 p.m.**

3231 North McColl, Suite B

McAllen

Local Employee Committee-McAllen

AGENDA:

1. Select local campaign manager
2. Review 1996 campaign calendar
3. Select eligibility subcommittee
4. Review 1995 campaign results

**Contact:** Thelma Garza, 1701 West Highway 83, Suite 225, McAllen, Texas 78501, (210) 686-6331 or Fax: (210) 686-8430.

**Filed:** March 29, 1996, 9:00 a.m.

TRD-9604386

◆ ◆ ◆  
**Employees Retirement System of Texas**

**Tuesday, April 9, 1996, 1:30 p.m.**

ERS Auditorium-ERS Building, 18th and Brazos

Austin

ERS Board of Trustees

AGENDA:

Approval of minutes; investment of the system's assets; healthselect rates/administrative fees under the Uniform Group Insurance Program for fiscal year 1997; HMO applications to provide services under the Uniform Group Insurance Program for fiscal year 1997; rates for basic/optional term life, short/long term disability, and AD&D coverages under the Uniform Group Insurance Program for fiscal year 1997; Provident Life/Accident Insurance Company rates for dental indemnity coverages under the Uniform Group Insurance Program for fiscal year 1997; selection of dental HMO vendor under the Uniform Group Insurance Program for fiscal year 1997; appeals of contested cases; next trustee meeting date; adjournment

**Contact:** William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

**Filed:** March 29, 1996, 8:34 a.m.

TRD-9604383

◆ ◆ ◆  
**Texas Department of Health**

**Friday, April 12, 1996, 9:00 a.m.**

2201 Donley Drive, Second Floor Conference Room (2.11)

Austin

Wholesale Drug Distributors Advisory Committee

AGENDA:

The committee will meet to discuss and possibly act on: committee member and staff introductions; advisory committee purpose and responsibilities; review of advisory committee rules; selection of advisory committee terms of service; overview of the Texas Depart-

ment of Health's (TDH) wholesale drug programs; TDH rulemaking process; review of proposed rules for wholesale drug distributors; and discussion of proposed rules for wholesale drug distributors.

**Contact:** Angela Benschel, 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 29, 1996, 4:03 p.m.

TRD-9604462

◆ ◆ ◆  
**Texas Health Care Information Council**

**Monday, April 8, 1996, 10:00 a.m.**

Veterans Affairs Medical Center, Houston Center for Quality of Care and Utilization Studies Conference Room (Room 108), 2002 Holcombe Boulevard

Houston

Hospital Discharge Data Subcommittee (HDDS)

AGENDA:

The subcommittee will discuss and possibly act on: development of the hospital discharge system; recommendations to the council regarding the hospital discharge system; and public comment.

**Contact:** Ann Henry, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. 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 29, 1996, 4:01 p.m.

TRD-9604455

◆ ◆ ◆  
**State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments**

**Friday, April 12, 1996, 4:00 p.m.**

Austin North Hilton and Towers, Magnolia Room, 6000 Middle Fiskville Road

Austin

Application Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on the approval/denial of the following applications (K.R.; L.E.; and R.V.; and J.P.).

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. 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 28, 1996, 3:55 p.m.

TRD-9604369

**Friday, April 12, 1996, 4:00 p.m.**

Austin North Hilton and Towers, Magnolia Room, 6000 Middle Fiskville Road

Austin

Complaints Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on the following complaints: FD/94-0005, FD/94-0025; FD/94-0029A; FD/94-0029B; FD/94-0061; FD/94-0018; FD/95-0024; FD/95-0029; FD/95-0035; FD/96-0001 through FD/96-0003; FD/96-0006 through FD/96-0008; and FD/96-0011.

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. 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 28, 1996, 3:55 p.m.

TRD-9604370

**Friday, April 12, 1996, 4:00 p.m.**

Austin North Hilton and Towers, Magnolia Room, 6000 Middle Fiskville Road

Austin

Rules Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on public comment on Title 22 Texas Administrative Code, Chapter 141 rules (code of ethics; administrative penalties; informal proceedings; and child support).

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. 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 28, 1996, 3:55 p.m.

TRD-9604371

**Saturday, April 13, 1996, 8:30 a.m.**

Austin North Hilton and Towers, Magnolia Room, 6000 Middle Fiskville Road

Austin

AGENDA:

The committee will discuss and possibly act on: election of committee president and vice-president; approval of the minutes from the previous meeting; committee reports (applications; complaints; and rules); president's report; executive director report; and setting of the 1997 test and meeting date.

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. 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 28, 1996, 3:56 p.m.

TRD-9604372



**Texas Higher Education Coordinating Board**

**Thursday, April 18, 1996, 9:15 a.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Universities Committee

AGENDA:

Consideration of matters relating to universities.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 3:16 p.m.

TRD-9604445

**Thursday, April 18, 1996, 10:00 a.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Community and Technical Colleges Committee

AGENDA:

Consideration of matters relating to community and technical colleges.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 3:13 p.m.

TRD-9604444

**Thursday, April 18, 1996, 10:45 a.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Health Affairs Committee

AGENDA:

Consideration of approval of request from the University of Texas Southwestern Medical Center at Dallas to establish a Department of Molecular Biology and Oncology; consideration of proposed amendments to rules relating to the Family Practice Residency Program (Chapter 13, §§13.61-13.67); and report from the Family Practice Residency Advisory Committee on the Family Practice Residency Program.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:58 p.m.

TRD-9604435

**Thursday, April 18, 1996, 11:15 a.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Campus Planning Committee

AGENDA:

Consideration of matters relating to campus planning.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:59 p.m.

TRD-9604436

**Thursday, April 18, 1996, Noon.**

Chevy Chase Office Complex, Building 1, Room 1.102, 7700 Chevy Chase Drive

Austin

Committee of the Whole

AGENDA:

The Committee of the Whole will meet in executive session to discuss pending or contemplated litigation.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:45 p.m.

TRD-9604429

**Thursday, April 18, 1996, 1:00 p.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Student Services Committee

AGENDA:

Consideration of adoption of amendments to rules for refund of tuition and fees at public community and technical colleges (§21.5); consideration of adoption of amendments to rules for the Fifth-Year Accounting Student Scholarship Program (Chapter 21, Subchapter GG); consideration of proposing amendments to rules for determining residence status (§§21.21-21.23 and 21.30); and ratification of commissioner's approval of request to charge lower out-of-state tuition to residents of states within 135 miles from the Texas Woman's University.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:47 p.m.

TRD-9604430

**Thursday, April 18, 1996, 1:45 p.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Administration and Financial Planning Committee

AGENDA:

Consideration of update to the agency's strategic plan; consideration of report of special item appropriations study conducted pursuant to rider 37, page III-47, House Bill 1 (Appropriations Act), 74th Legislature; consideration of report of study of the facilities lease at the University of Texas at Brownsville conducted pursuant to rider 2, page III-69, House Bill 1 (Appropriations Act), 74th Legislature; consideration of a plan to solicit bids and award a contract for management of the TexShare library resource sharing project during fiscal year 1997; consideration of amendment to the Coordinating Board budget for fiscal year 1996; consideration of approval of the commissioner's appointment of Michael Davis as internal auditor for the Coordinating Board; and consideration of approval of amendments to the Internal Auditing Charter.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:51 p.m.

TRD-9604431

**Thursday, April 18, 1996, 2:30 p.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Research Committee

AGENDA:

Report on research expenditures in Texas public universities and health institutions.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:52 p.m.

TRD-9604432

**Thursday, April 18, 1996, 2:45 p.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Access and Equity Committee

AGENDA:

Progress report on the Access and Equity 2000 Plan for Public Higher Education.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:53 p.m.

TRD-9604433

**Thursday, April 18, 1996, 3:00 p.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Joint Advisory Committee, Coordinating Board, State Board of Education

AGENDA:

Report of the April meeting of the Joint Advisory Committee.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:56 p.m.

TRD-9604434

**Friday, April 19, 1996, 8:30 a.m.**

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Coordinating Board Meeting

AGENDA:

Consideration of matters relating to the Committee on Universities; the Committee on Community and Technical Colleges; the Committee on Health Affairs; the Committee on Campus Planning; the Committee on Student Services; the Committee on Administration and Financial Planning; the Committee on Research; the Committee on Access and Equity; the Joint Advisory Committee, Coordinating Board/State Board of Education; and reports to the board.

**Contact:** Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

**Filed:** March 29, 1996, 2:35 p.m.

TRD-9604428

◆ ◆ ◆



## Texas House of Representatives

**Wednesday, April 17, 1996, 10:00 a.m.**

Texas Capitol Extension, 15th Street and Congress Avenue, Room E1.030

Austin

House Committee on Appropriations, Subcommittee on Major Information Systems

AGENDA:

- I. Roll call
- II. Introductory remarks
- III. The role of the Department of Information Resources
- IV. The Quality Assurance Team and discussion of high risk projects
- V. The State Auditor's Office
- VI. Sunset Advisory Commission recommendations
- VII. Adjournment

**Contact:** Tim Dudley, P.O. Box 2910, Austin, Texas 78703, (512) 463-0632.

**Filed:** March 28, 1996, 4:42 p.m.

TRD-9604374

**Wednesday, April 17, 1996, 10:00 a.m.**

Arlington City Council Chambers, 101 West Abram, First Floor  
Arlington

House Committee on Business and Industry, Subcommittee on Mechanic and Materialmen's Liens

AGENDA:

- I. Call to order
- II. Roll call
- III. Invited testimony
- IV. Public testimony
- V. Closing remarks
- VI. Adjourn

**Contact:** Tim Dudley, P.O. Box 2910, Austin, Texas 78703, (512) 463-0632.

**Filed:** April 1, 1996, 8:58 a.m.

TRD-9604470

**Thursday, April 18, 1996, 10:00 a.m.**

The Ballpark at Arlington, 1000 Ballpark Way, Fourth Floor Board Room

Arlington

House Committee on Business and Industry, Subcommittee on Sports Facility Financing

AGENDA:

- I. Call to order
- II. Roll call
- III. Invited testimony
- IV. Public testimony
- V. Closing remarks

VI. Adjourn

**Contact:** Tim Dudley, P.O. Box 2910, Austin, Texas 78703, (512) 463-0632.

**Filed:** April 1, 1996, 8:58 a.m.

TRD-9604471



## Texas Department of Human Services

**Friday, April 12, 1996, 10:30 a.m.**

701 West 51st Street, Conference Room 560-W

Austin

Advisory Subcommittee on Nursing Facilities

AGENDA:

1. Call to order.
2. Roll call.
3. Introduction of visitors/staff.
4. Assistant commissioner's update.
5. Rate rule changes on community care programs.
6. Rule changes affecting nursing facilities-House Bill 2644 and rate increases.
7. MDS 2.0 electronic transfer and Section S.
8. Other items of interest.
9. Next meeting and adjournment.

**Contact:** Mary Sidelnik, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-6770.

**Filed:** March 29, 1996, 11:39 a.m.

TRD-9604407



## Texas Incentive and Productivity Commission

**Wednesday, April 10, 1996, 1:00 p.m.**

Reagan Building, Room #109, 105 West 15th Avenue

Austin

AGENDA:

- I. Call to order and roll call
- II. Approval of minutes of previous meeting
- III. Consideration of employee suggestions for approval
- IV. Consideration of 1996 productivity bonus plans for approval
- V. Consideration of approval to publish for comment revisions to State Employee Incentive Program rules
- VI. Consideration of approval to public for comment revisions to Productivity Bonus Program rules
- VII. Consideration of agency strategic plan for 1997-2001
- VIII. Report on administrative matters
- IX. Consideration of possible changes to the administration of the State Employee Incentive Program and the Productivity Bonus Program
- X. Adjournment

**Contact:** M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

**Filed:** April 1, 1996, 9:31 a.m.

TRD-9604482



## Texas Department of Insurance

**Friday, April 12, 1996, 1:00 p.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0497.E

In the matter of a hearing request by Ella Mae Heron on an appeal from a decision of the Texas Catastrophe Property Insurance Association (TCPIA) regarding a windstorm damage claim.

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

**Filed:** March 27, 1996, 11:09 a.m.

TRD-9604295

**Monday, April 15, 1996, 9:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0278.c

To consider whether disciplinary action should be taken against Eugene Motley Oliver, Dallas, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

**Filed:** April 1, 1996, 9:01 a.m.

TRD-9604474

**Wednesday, April 17, 1996, 9:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0446.c

To consider whether disciplinary action should be taken against Scotty Lynn Taylor, Sulphur Springs, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

**Filed:** April 1, 1996, 9:01 a.m.

TRD-9604475

**Wednesday, April 17, 1996, 9:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0282.c

To consider whether disciplinary action should be taken against Shannon Lee Carroll, Tyler, Texas, who holds an Insurance Adjuster'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:** April 1, 1996, 9:01 a.m.

TRD-9604476

**Thursday, April 18, 1996, 9:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0277.E

Request for an appeal hearing by J & J Roofing from a decision of the Texas Workers' Compensation Insurance Facility (TWCIF) concerning additional premiums owed.

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

**Filed:** April 1, 1996, 9:01 a.m.

TRD-9604477

## ◆ ◆ ◆ Commission on Jail Standards

**Friday, April 12, 1996, 8:30 a.m.**

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA:

Education Committee. Review staffs training efforts.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** March 29, 1996, 9:13 a.m.

TRD-9604389

**Friday, April 12, 1996, 8:30 a.m.**

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA:

The Internal Audit Committee will meet to determine if an internal audit is required for fiscal year 1997.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** March 29, 1996, 9:13 a.m.

TRD-9604390

**Friday, April 12, 1996, 9:00 a.m.**

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA:

Call to order. Roll call of commission members. Reading and approval of January 26, 1996 minutes. Old business: Angelina County, El Paso County, Runnels County, changes to standards-adopt, status of payment to counties and jail population, completed jail projects, active remedial orders/cancel/changes, Juvenile Justice survey. New business: Calhoun County, Hidalgo County, Webb

County, Education Committee report, changes to standards-proposed, changes to standards-adopt-emergency, disbursement of inmate telephone revenue (AG Letter Opinion Number LO96-032), Internal Audit Committee report. Variances: Bowie County, Liberty County, Grimes County. Directors report. Other business. Executive session. Adjourn.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** March 29, 1996, 9:14 a.m.

TRD-9604391

◆           ◆           ◆

## Texas Juvenile Probation Commission

**Thursday, April 11, 1996, 9:00 a.m.**

2015 South IH-35

Austin

Texas Juvenile Probation Commission and Department of Protective and Regulatory Services Joint Task Force

AGENDA:

- I. Call to order
- II. Introduction of committee members
- III. Update on Joint DPRS/TJPC efforts
- CYD grants
- STARS
- IV. Presentation and discussion of model guidelines
- Historical perspective
- Staff work group report
- V. Discussion of continued role of task force
- VI. Public comment
- VII. Other business
- Setting of next meeting
- VIII. Adjourn

**Contact:** Vicki Wright, 2015 South IH-35, Austin, Texas 78711, (512) 912-2400.

**Filed:** April 1, 1996, 8:58 a.m.

TRD-9604473

**Thursday, April 11, 1996, 2:00 p.m.**

2015 South IH-35

Austin

Texas Juvenile Probation Commission and Texas Youth Commission

AGENDA:

- I. Approval of minutes
- II. Update
- Intermediate sanction facilities
- MOU training
- TJPC/TYC Joint strategic plan
- Alternative funding mechanisms
- Fiscal year 1996 commitment rates

III. Open Meetings Act report

IV Board discussion-topics for work group

Commitment quotas

Progressive sanction funding

Consolidation

Joint statements of principles

V. Schedule next meeting

**Contact:** Vicki Wright, 2015 South IH-35, Austin, Texas 78711, (512) 443-2001.

**Filed:** April 1, 1996, 8:58 a.m.

TRD-9604472

◆           ◆           ◆

## Texas State Library and Archives Commission

**Thursday-Friday, April 11-12, 1996, 9:30 a.m. and 9:00 a.m., respectively.**

1201 Brazos, Room 314, Lorenzo de Zavala State Library and Archives Building

Austin

Library Services Construction Act Advisory Council

AGENDA:

- 1. Orientation for new LSCA Council members.
- 2. Introductions and administrative details.
- 3. Review and approval of LSCA Long Range Plan for SFY 1996-1999 (revised July 1996).
- 4. Review and approval of LSCA Basic State Plan and 1997 Annual Program (including grant guidelines).
- 5. Information items:
  - a. Status report on library-related legislation
  - b. Status report on 1998-1999 biennial budget request
  - c. Status report on TexNet Interlibrary Loan and Texas Group
  - d. Status report on project link
  - e. Status report on access Texas
- 6. Review of special projects grant guidelines and procedures.
- 7. Review of Title I special projects grant applications.

**Contact:** Edward Seidenberg, Box 12927, Austin, Texas 78711-2927, (512) 463-5459.

**Filed:** March 28, 1996, 8:43 a.m.

TRD-9604343

◆           ◆           ◆

## Texas Department of Licensing and Regulation

**Friday, March 29, 1996, 9:00 a.m.**

E. O. Thompson Building, 920 Colorado, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

Emergency Revised Agenda

AGENDA:

IX. Executive session

Change B. Under §551.074, Government Code, the commission will discuss the appointment, posting, evaluation, duties, and actions of the executive director.

X. Open session/public comments

Add A. Return to open session for further discussion and possible action involving pending litigation or settlement offers.

B. Discussion and possible action involving the appointment, posting, evaluation, duties, and actions of the executive director.

Reason for emergency: An urgent public necessity exists to supplement the previously posted notice for the meeting on March 29, 1996, to ensure that appropriate action can be taken to resolve the issue of the appointment of the executive director. It was reasonably unforeseen that consideration of the appointment of the executive director as included in the original notice of meeting (executive session) submitted on March 15, 1996, and published in the *Texas Register* on March 22, 1996, might have been insufficient and it is urgent that the additional specific agenda items derived from the original posting be now posted so that there is no question that all appropriate action can be taken at the scheduled and posted meeting, in open session, since the term of the executive director expired by operation of law on March 1, 1996.

**Contact:** Phyllis Wilson, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3173.

**Filed:** March 28, 1996, 1:33 p.m.

TRD-9604363

**Tuesday, April 9, 1996, 9:00 a.m.**

920 Colorado, E. O. Thompson Building, First Floor, Room 108  
Austin

Enforcement Division, Auctioneering

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider possible revocation of the auctioneer license of the Respondent, James Michael Long, for failure to pay public monies including, but not limited to, sales tax at the times and as prescribed by law in violation of 16 Texas Administrative Code (TAC) §67.101(3), pursuant to the 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 29, 1996, 9:07 a.m.

TRD-9604387



**Texas Natural Resource Conservation Commission**

**Thursday, April 4, 1996, 9:30 a.m.**

12000 Park 35 Circle, IH-35, Building E, Room 201S

Austin

Water Well Drillers Advisory Council

AGENDA:

The Texas Water Well Drillers Advisory Council will meet to discuss and take action on the following: consider the approval of minutes of the January 25, 1996 meeting; consider whether to set the following complaints for a formal hearing or take appropriate legal action: Ronnie Abston, Randy Bass, Barry Beard, Billy Davis, Paul Higgins, Gene Huckabee, Jerry Kashwer, Floyd Smith, Leroy Spear, Robert Woodroof; consider certification of applicants for registration and driller-trainee registration; and consider staff reports.

**Contact:** Rick Wilder, 12000 Park 35 Circle, IH-35, Austin, Texas 78711, (512) 239-0541.

**Filed:** March 27, 1996, 11:11 a.m.

TRD-9604300

**Thursday, April 4, 1996, 9:45 a.m.**

Texas A&M University-Corpus Christi, Conrad Blucher Institute, 6300 Ocean Drive

Corpus Christi

Scientific/Technical Advisory Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to order/introduction/minutes

II. Program update

III. Discussion of fiscal year 1996 constituent loading model scope of work

IV. Discussion of draft fiscal year 1997 project descriptions and scopes of work

V. Consideration of a fiscal year 1997 septic systems project

VI. Estuaries and nutrients: panel discussion

VII. Estuaries and nutrients: questions and answer session

VIII. Additional items/adjournment

**Contact:** Richard Volk, Campus Box 290, Corpus Christi, Texas 78412, (512) 985-6767.

**Filed:** March 28, 1996, 11:16 a.m.

TRD-9604348

**Wednesday, April 10, 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: utility matter; rate matter; air quality enforcement; rules; 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 actions, 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, IH-35, Austin, Texas 78753, (512) 239-3317.

**Filed:** March 29, 1996, 3:07 p.m.

TRD-9604443

**Thursday, April 11, 1996, 9:30 a.m.**

Conrad Blucher Institute, Texas A&M University-Corpus Christi, 6300 Ocean Drive

Corpus Christi

Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

- I. Call to order/introduction/minutes
- II. Program update
- III. Discussion/approval of fiscal year 1996 constituent loadings model project
- IV. Discussion of fiscal year 1997 characterization projects: task descriptions and scopes-of-work
- V. Discussion of year one implementation funding
- VI. Approval of fiscal year 1995 reports
- VII. Discussion of draft "Bay Guidebook"
- VIII. Additional items/adjournment

**Contact:** Richard Volk, Campus Box 290, Corpus Christi, Texas 78412, (512) 985-6767.

**Filed:** March 28, 1996, 11:16 a.m.

TRD-9604351

**Tuesday, May 7, 1996, 10:00 a.m.**

Upshur County Courthouse-Third Floor, Highway 154 (West Tyler Street)

Gilmer

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by William L. Dixon, Sr. with the Texas Natural Resource Conservation Commission for proposed permit number 13800-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 45,000 gallons per day. The proposed permit replaces Permit Number 13491-01, which expired on April 25, 1995. The wastewater treatment facilities are approximately 1,240 feet west of State Highway 300, and 0.38 mile south of the intersection of State Highway 300 and Farm to Market Road 726 in Upshur County, Texas. The treated effluent is discharged into Bog Creek; thence to Clear Creek; thence to Little Cypress Bayou (Creek) in Segment Number 0409 of the Cypress Creek Basin. SOAH Docket Number 582-96-0479.

**Contact:** Susan Prior, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

**Filed:** March 27, 1996, 12:28 p.m.

TRD-9604312

**Thursday, May 16, 1996, 10:00 a.m.**

Texas Natural Resource Conservation Commission, 12015 Park 35 Circle, IH-35 North at Yager Lane, Building F, Room 5108

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by Browning-Ferris, Inc. with the Texas Natural Resource Conservation Commission for proposed permit number MSW1663-B to authorize an amendment to their existing Type I municipal solid waste management facility permit. The proposed permit amendment authorizes this facility to upgrade to Subtitle D standards and to increase its excavation depth. The municipal solid waste facility is located on Buffalo Road, two miles west of Interstate Highway 27 and one mile north of the City of Canyon in Randall County, Texas. SOAH Docket Number 582-96-0502.

**Contact:** Susan Prior, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.

**Filed:** March 29, 1996, 12:50 p.m.

TRD-9604419

◆ ◆ ◆  
**Board of Nurse Examiners**

**Wednesday, April 10, 1996, 9:00 a.m.**

333 Guadalupe, Tower 3, Suite 460

Austin

Eligibility and Disciplinary Committee

AGENDA:

The Eligibility and Disciplinary Committee will meet to consider and take action on: nine eligibility matters; 11 declaratory orders; one ALJ's proposal for decision; and six agreed orders.

**Contact:** Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 305-6811.

**Filed:** March 28, 1996, 11:16 a.m.

TRD-9604347

◆ ◆ ◆  
**Texas Board of Nursing Facility Administrators**

**Thursday, April 18, 1996, 9:00 a.m.**

Medallion Hotel, Executive Board Room, 4900 Valley View Lane

Dallas

Education Committee

AGENDA:

The committee will discuss and possibly act on: applicant educational requests (L.R.; V.M.; S.C.; and D.B.); and general educational requests (Southwest Texas State University; University of North Texas Health Science Center at Fort Worth; Austin Community College; K-Tech Associates; Weatherford College; and Texas Health Information Management Association).

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6787. 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 29, 1996, 4:02 p.m.

TRD-9604456

**Thursday, April 18, 1996, 10:30 a.m.**

Medallion Hotel, Executive Board Room, 4900 Valley View Lane

Dallas

Policies and Procedure Committee

AGENDA:

The committee will discuss and possibly act on proposed changes to Title 22, Texas Administrative Code, Chapter 241 (child support; administrative penalties; code of ethics; reinstatement; licensure by endorsement issues; and inactive status).

**Contact:** Bobby Schmidt, 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 29, 1996, 4:02 p.m.

TRD-9604457

**Thursday, April 18, 1996, 1:00 p.m.**

Medallion Hotel, Executive Board Room, 4900 Valley View Lane  
Dallas

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: complaints (proposed administrative closure (96-NFA-00071; 96-NFA-00084; 96-NFA-00089; 96-NFA-00092 through 96-NFA-00094; 96-NFA-00100 through 96-NFA-00104; 96-NFA-00010; 96-NFA-00112 through 96-NFA-00114; 96-NFA-00116; 96-NFA-00119; 96-NFA-00120; and 96-NFA-00122); investigated cases-reported allegations not substantiated (95-NFA-00150; 95-NFA-00162; 95-NFA-00176; 96-NFA-00009; 96-NFA-00012; 96-NFA-00013; 96-NFA-00027; 96-NFA-00032 through 96-NFA-00034; 96-NFA-00036; 96-NFA-00042; and 96-NFA-00043); investigated case-report allegations are substantiated or cases which need further complaints committee review (04-94-12-00451; 09-94-12-00157, -00159, -00167; 11-94-02-00382, -00394; 94-00018; 95-NFA-00142; 95-NFA-00145; 95-NFA-00153; 95-NFA-00172; 95-NFA-00180; 95-NFA-00192 (V.S.); 96-NFA-00001; 96-NFA-00003; 96-NFA-00007; 96-NFA-00010; 96-NFA-00040; and 96-NFA-00083); appealed cases returned for discussion (05-93-02-06696; 03-94-10-00586, -1100628, -00682, -00699, -00810, -00825, -00861, -00918, -1001, -1033, -1068; 03-94-12-01017; 04-94-04-00936, -00943, -00967; 06-94-11-00432; 11-94-01-00334, -00335, -00336; 94-00006; 95-00055; 95-00058; 95-NFA-00086; 95-NFA-00097; 95-NFA-00101 (first licensee) (V.S.); 95-NFA-00101 (second licensee); 95-NFA-00110; and 95-NFA-00147); and cases in which further information was requested by the Complaints Committee (07-93-03738, -03523, -03442, -03552, and -03580).

**Contact:** Bobby Schmidt, 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 29, 1996, 4:03 p.m.

TRD-9604459

**Friday, April 19, 1996, 9:00 a.m.**

Medallion Hotel, Executive Board Room, 4900 Valley View Lane  
Dallas

Finance Committee

AGENDA:

The committee will discuss and possibly act on update of board budget.

**Contact:** Bobby Schmidt, 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 29, 1996, 4:02 p.m.

TRD-9604458

**Friday, April 19, 1996, 9:30 a.m.**

Medallion Hotel, Executive Board Room, 4900 Valley View Lane

Dallas

AGENDA:

The board will discuss and possibly act on: approval of minutes from January 19, 1996; committee reports (complaints; finance; education; and policies and procedures); action on Title 22, Texas Administrative Code, Chapter 241 (child support; administrative penalties; code of ethics; reinstatement; licensure by endorsement issues; and inactive status); amendments to nursing facility requirements and status of House Bill 2264; board chair report; and executive secretary report.

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. 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 29, 1996, 4:03 p.m.

TRD-9604460

◆ ◆ ◆  
**Texas State Board of Pharmacy**

**Monday, April 8, 1996, 9:00 a.m.**

One Capitol Square, 300 West 15th Street, Fifth Floor, Room 502  
Austin

Disciplinary Hearing

AGENDA:

The State Office of Administrative Hearings will conduct a disciplinary hearing in the matter of James Willie Poindexter, R.Ph. (TSBP #16683) and Safeguard Drugs (TSBP #14648), Case Number B-93-011, SOAH Docket Number 515-96-0180

**Contact:** Carol Fisher, R.Ph., 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701-3942, (512) 305-8027.

**Filed:** March 29, 1996, 9:00 a.m.

TRD-9604385

◆ ◆ ◆  
**Texas Board of Physical Therapy Examiners**

**Tuesday, April 9, 1996, 9:30 a.m.**

333 Guadalupe, Suite 2-510

Austin

AGENDA:

I. Public comment

II. Approval of minutes of November 28, 1995 board meeting

III. Discussion and possible action on changes to the Texas Physical Therapy Act

IV. Discussion and possible action on correspondence from the Federation of State Boards of Physical Therapy

V. Committee reports

A. Rules Committee

1. Review and possible action on proposed revision of §321.1

2. Review and possible adoption of rules proposed by the board and published in the *Texas Register* as follows: §§321.1, 323.4, 329.1, 329.2, 329.5, 341.3, 343.41, 337.2, and 341.1

3. Review and possible action on proposed revision of §§339.1-339.30

4. Review and possible action on proposed revision of §§329.1-329.5

B. Investigation Committee

1. Review and possible action on agreed order numbers 95094, 96081, 96017, 96116, 96075, 95175, 96006, 96011, and 96039

2. Discussion of general investigative activity

C. Applications Review Committee

D. Education Committee

1. Review and possible action on proposed revision of §§329.1-329.5

VI. PT coordinator's report

VII. Executive director's report

VIII. Presiding officer's report

IX. Items for future consideration

X. Adjournment

**Contact:** Gerard Swain, 333 Guadalupe, Suite 2-510, Austin, Texas 78704, (512) 305-6900.

**Filed:** March 28, 1996, 1:50 p.m.

TRD-9604365



## Public Utility Commission of Texas

**Wednesday, April 3, 1996, 1:00 p.m.**

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commission will hold a workshop in Project Number 14400-competitive resource acquisition and integrated resource planning.

**Contact:** Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

**Filed:** March 27, 1996, 12:57 p.m.

TRD-9604313

**Monday, April 15, 1996, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled for the above date and time in Docket Number 15319-application of Central Telephone Company of Texas to provide intrastate switched access services

**Contact:** Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** March 28, 1996, 3:08 p.m.

TRD-9604368



## Texas Residential Property Insurance Market Assistance Program

**Tuesday, April 9, 1996, 9:30 a.m.**

333 Guadalupe, Tower I, Room 370A

Austin

Executive Committee

AGENDA:

General Meeting

-Reconsideration of alternative proposal relating to agent renewal commissions, as amended to include salaried representatives' renewal commission fees in MAP executive committee's recommended plan of operation

-Discussion of operational procedures of the MAP, including applications and other forms to be promulgated for use in the MAP

-General administrative matters

**Contact:** Lyndon Anderson, 333 Guadalupe Street, Austin, Texas 78711, (512) 322-2235.

**Filed:** March 29, 1996, 3:06 p.m.

TRD-9604442



## State Board of Examiners for Speech-Language Pathology and Audiology

**Thursday, April 11, 1996, 1:30 p.m.**

Wyndam Anatole Hotel, Grand Ballroom E, 2201 Stemmons Freeway

Dallas

Questions and Answer Forum

AGENDA:

The board will hold a question and answer session concerning licensing and regulations of speech-language pathologists and audiologists. The information will be presented to the full board on July 19, 1996.

**Contact:** Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. 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 29, 1996, 4:08 p.m.

TRD-9604464

**Thursday, April 11, 1996, 3:30 p.m.**

Wyndam Anatole Hotel, Stuben Room, 2201 Stemmons Freeway  
Dallas

Ad Hoc Advisory Committee

AGENDA:

The committee will meet to discuss how to implement a program for early identification of hearing impaired infants and hearing screening at 20 decibels. The information will be presented to the full board on July 19, 1996.

**Contact:** Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. 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 29, 1996, 4:08 p.m.

TRD-9604466

**Friday, April 12, 1996, 8:30 a.m.**

Wyndam Anatole Hotel, Grand Ballroom A, 2201 Stemmons Freeway

Dallas

Licensing Issues Forum

AGENDA:

The board will meet with students enrolled in communication disorders programs to discuss licensing issues. The information will be presented to the full board on July 19, 1996.

**Contact:** Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. 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 29, 1996, 4:07 p.m.

TRD-9604463

**Friday, April 12, 1996, 10:30 a.m.**

Wyndam Anatole Hotel, Coral Room, 2201 Stemmons Freeway

Dallas

Meeting with Universities' Staff

AGENDA:

The board will meet with directors or representatives of universities with communication disorders programs to discuss coursework and clinical observation and experience required for licensure and information to be presented to students by the universities concerning the licensure procedures. The information will be presented to the full board on July 19, 1996.

**Contact:** Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. 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 29, 1996, 4:08 p.m.

TRD-9604465



## **Telecommunications Infrastructure Fund Board**

**Monday, April 8, 1996, 10:45 a.m.**

E1.010, State Capitol Extension, Executive Session-Room E1.018, 1400 North Congress Avenue, Capitol Extension

Austin

AGENDA:

I. Call to order open meeting/quorum call-Chairman Carolyn Bacon

II. Approve minutes from prior meetings

III. Testimony from Dr. Norman Hackerman

IV. Invited testimony

V. Call to order executive session: discussion of employment and evaluation of specific executive director applicants pursuant to Government Code, §551. 074.

VI. Adjourn executive session

VII. Adjourn open meeting

**Contact:** Jim Glotfelty or Danner Bethel, P.O. Box 12428, Austin, Texas 78701, (512) 936-8432.

**Filed:** March 29, 1996, 2:19 p.m.

TRD-9604424



## **Texas State Technical College System**

**Monday, April 1, 1996, 9:00 a.m.**

Texas State Technical College System, System Conference Room, 3801 Campus Drive

Waco

Board of Regents Executive Committee Teleconference

AGENDA:

The Board of Regents Executive Committee will discuss and act on the following agenda items:

Water line easement with Fleet National Bank of Connecticut N.A. formerly Shawmut Bank Connecticut, National Association, as owner trustee and lessee with Chrysler Technologies Airborne Systems, Inc.

Sewer line easement with Fleet National Bank of Connecticut, N.A. formerly Shawmut Bank Connecticut, National Association, as owner trustee and lessee with Chrysler Technologies Airborne Systems, Inc.

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

**Filed:** March 27, 1996, 4:33 p.m.

TRD-9604334

**Monday, April 1, 1996, 9:00 a.m.**

Texas State Technical College System, System Conference Room, 3801 Campus Drive

Waco

Revised Agenda

Board of Regents Executive Committee Teleconference

AGENDA:

Add agenda items:

Right-of-way easement for gas line to serve Chrysler Technologies Airborne Systems (CTAS) Hangar at Texas State Technical College Waco

Right-of-way easement for fire protection to serve Chrysler Technologies Airborne Systems (CTAS) Hangar at Texas State Technical College Waco

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

**Filed:** March 29, 1996, 8:14 a.m.

TRD-9604376

**Monday, April 1, 1996, 9:00 a.m.**

Texas State Technical College System, System Conference Room, 3801 Campus Drive

Waco



Revised Agenda

Board of Regents Executive Committee Teleconference

AGENDA:

Add agenda item:

Other necessary right-of-way easements for service

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

**Filed:** March 29, 1996, 8:50 a.m.

TRD-9604384



## The Texas State University System

**Tuesday, April 2, 1996, 12:30 p.m.**

Second Floor, Austin College Building, Sam Houston State University

Huntsville

Selection Advisory Committee

AGENDA:

Consideration of any and all subjects leading to selection of a president at Sam Houston State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** March 28, 1996, 11:26 a.m.

TRD-9604360



## Texas Title Insurance Guaranty Association

**Tuesday, April 9, 1996, 10:00 a.m.**

333 Guadalupe, 12th Floor, Hobby 1

Austin

Board of Directors

AGENDA:

I. Call meeting to order

II. Approval of minutes from January 9, 1996 Board of Directors meeting

III. Financial report-Marvin Coffman

IV. Report from West, Davis and Company regarding the annual audit of the financial statements for year ended December 31, 1995.

V. Special deputy receiver's report-Ed Engleking

VI. Title examiner's report-Ethel Benedict

VII. Conservator's report-Gene Jarmon

VIII. Counsel's report-Burnie Burner

IX. Discussion and ratification of agreement to move fidelity accounts to Chase Securities.

X. Discussion and possible action regarding expanded role of Title examiners to audit title agent statistical reports

XI. Discussion of storage of Guaranty Association and receivership records and methods of funding.

XII. Set date and time for next meeting (July 9, 1996)

XIII. Adjourn

**Contact:** Burnie Burner, 301 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 474-1587.

**Filed:** March 29, 1996, 1:32 p.m.

TRD-9604422



## University of Houston System

**Wednesday, April 3, 1996, 1:00 p.m.**

Waldorf Astoria Ballroom (Main), University Hilton Hotel, 4800 Calhoun, University of Houston

Houston

Special Called Board of Regents

AGENDA:

To host an open forum for the University of Houston System Administration regarding the board's decision on the structure of the reorganization of the University of Houston System.

**Contact:** Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

**Filed:** March 27, 1996, 3:55 p.m.

TRD-9604329



## University Interscholastic League

**Monday, April 1, 1996, 9:00 a.m.**

Thompson Conference Center, 26th Street and Red River Austin

Emergency Revised Agenda

Waiver Review Board

AGENDA:

AA. Request for waiver of Parent Residence Rule by Chris Rowland, representing Flatonia High School in Flatonia, Texas.

BB. Request for waiver of the Four-Year Rule by Samuel Jones, representing Lytle High School in Lytle, Texas

CC. Request for waiver of the Parent Residence Rule by Jason G. Pogue representing Langham Creek High School in Houston, Texas

Reason for emergency: Just received BB and CC in our office. Must be decided before track meet on April 5, 1996.

**Contact:** Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

**Filed:** March 28, 1996, 2:12 p.m.

TRD-9604367



## Texas Workers' Compensation Commission

**Thursday, April 4, 1996, 9:30 a.m.**

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order

2. Approval of minutes for the public meeting of January 11, 1996 and February 15, 1996
3. Discussion and possible action on adoption of repeal of rules: Rule 165. 1-165.5
4. Discussion and possible action on adoption of amendment: Rule 126.10 and 140.5
5. Discussion and possible action on proposal of amendment: Rule 134.201
6. Discussion and possible action on proposal of new rule and proposal of repeal of rule: Rule 134.401 (new) and Rule 134.400 (repeal)
7. Discussion and possible action on adoption of new rule and adoption of repeal of rule: Rule 134.601 (new) and Rule 134.600 (repeal)
8. Discussion and possible action on members to serve on the Medical Advisory Committee
9. Executive session
10. Action on matters considered in executive session
11. General reports, discussion and possible action on issues relating to commission activities
12. Confirmation of future public meetings and hearings
13. Adjournment

The Texas Workers' Compensation Commission (TWCC) offers reasonable accommodations for persons attending meetings, hearings or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact Idalia Cantu at (512) 440-5690 a minimum of two days prior to the event date.

**Contact:** Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

**Filed:** March 29, 1996, 12:45 p.m.  
TRD-9604418



## Regional Meetings

### Meetings Filed March 27, 1996

**The Austin Travis County MHMR Center (Emergency Revised Agenda.)** Board of Trustees met at 1430 Collier Street-Board Room, Austin, March 28, 1996, at 5:00 p.m. (Reason for emergency: Item added to agenda that needs immediate action. Board already scheduled to meet on March 28, 1996.) Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9604335.

**The Brazos Valley MHMR Authority** Budget and Finance/Personnel met at 1504 Texas Avenue, Bryan, April 2, 1996, at Noon. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9604293.

**The Brazos Valley MHMR Authority** Budget and Finance/Personnel met at 1504 Texas Avenue, Bryan, April 2, 1996, at Noon. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9604326.

**The Brazos Valley MHMR Authority** Board of Trustees met at 1504 Texas Avenue, Bryan, April 2, 1996, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9604294.

**The Brazos Valley MHMR Authority** Board of Trustees met at 1504 Texas Avenue, Bryan, April 2, 1996, at 1:00 p.m. Information

may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9604327.

**The East Texas Council of Governments** Northeast Texas Air Care Policy Committee will meet at 3800 Stone Road, Kilgore, April 9, 1996, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9604331.

**The Eastland County Appraisal District** Board of Directors will meet at 100 Main, Eastland, April 10, 1996, at 1:00 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9604314.

**The Fisher County Appraisal District** Fisher CAD Board of Directors will meet at the Fisher County Courthouse-Court Room, Roby, April 11, 1996, at 8:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9604289.

**The Heart of Texas Council of Governments** Executive Committee met at 300 Franklin Avenue, Waco, April 2, 1996, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9604328.

**The TML Group Benefits Risk Pool (Emergency Meeting.)** Executive Committee met at 1821 Rutherford Lane, Suite 300, Austin, March 27, 1996, at 1:30 p.m. (Reason for emergency: Construction is being delayed pending acceptance/rejection of change order.) Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, (512) 719-6521. TRD-9604302.



### Meetings Filed March 28, 1996

**The Barton Springs/Edwards Aquifer Conservation District** Board of Directors-Called Meeting met at 1124A Regal Row, Austin, April 1, 1996, at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or Fax: (512) 282-7016. TRD-9604341.

**The Barton Springs/Edwards Aquifer Conservation District** Board of Directors-Called Meeting met at 1124A Regal Row, Austin, April 1, 1996, at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or Fax: (512) 282-7016. TRD-9604346.

**The Bell-Milam-Falls WSC** Board met at FM 485 West, Cameron, April 4, 1996, at 8:30 a.m. Information may be obtained from Dwayne Jelke, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9604366.

**The Bosque Higher Education Authority, Inc.** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:45 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604359.

**The Brazos Higher Educational Assistance, Inc.** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604354.

**The Brazos Higher Education Authority, Inc.** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:00 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604352.

**The Brazos Higher Education Service Corporation, Inc.** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at Noon. Information may be obtained

from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604356.

**The Brazos Student Finance Corporation** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604353.

**The Dallas Central Appraisal District** Board of Directors-Regular Meeting met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, April 3, 1996, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9604342.

**The Pecos Higher Education Authority, Inc.** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:30 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604358.

**The Pecos Student Finance Corporation** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 11:45 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604355.

**The Trinity Higher Education Authority, Inc.** Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, April 3, 1996, at 12:15 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9604357.

**The Tyler County Appraisal District** Board of Directors will meet at 806 West Bluff, Woodville, April 9, 1996, at 10:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9604345.



#### Meetings Filed March 29, 1996

**The Ark-Tex Council of Governments** Board of Directors (CEO's) will meet at the Titus County Civic Center, Highway 67 at Jefferson, Mt. Pleasant, April 10, 1996, at 10:00 a.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9604382.

**The Cash Water Supply Corporation** Board of Directors met at Highway 69, Lone Oak Elementary School, Lone Oak, April 1, 1996, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9604427.

**The Creedmoor Maha Water Corporation** Monthly Board of Directors Meeting met at 1699 Laws Road, Mustang Ridge, April 3, 1996, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113 or (512) 243-1991. TRD-9604404.

**The Dawson County Central Appraisal District** Board of Directors met at 1806 Lubbock Highway, Lamesa, April 3, 1996, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9604381.

**The East Texas Council of Governments** Executive Committee met at 1306 Houston Street, Kilgore, April 4, 1996, at 12:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9604423.

**The Jack County Appraisal District** Agricultural Advisory Committee met at 210 North Church Street, Jacksboro, April 2, 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-9604406.

**The Middle Rio Grande Development Council (Revised Agenda.)** Texas Review and Comment System met in the MRGDC Conference Room, 209 North Getty Street, Uvalde, April 3, 1996, at 4:00 p.m. Information may be obtained from Erma Alejandro, 209 North Getty Street, Uvalde, Texas 78801, (210) 278-4151, Ext. 10 or Fax: (210) 278-2929. TRD-9604421.

**The Red River Authority of Texas** Board of Directors will meet at Four Points-Sheraton, 100 Central Freeway, Wichita Falls, April 17, 1996, at 10:00 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, 900 Eighth Street, Wichita Falls, Texas 76301-6894, (817) 723-0855. TRD-9604440.

**The Rockwall County Central Appraisal District** Appraisal Review Board met at 106 North San Jacinto, Rockwall, April 4, 1996, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9604411.

**The Shackelford Water Supply Corporation** Directors met at the Fort Griffin Restaurant, Albany, April 3, 1996, at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (817) 345-6868. TRD-9604388.

**The West Central Texas Council of Governments/Career Stop (Revised Agenda.)** Career Stop Advisory Committee met at 809 North Judge Ely, Abilene, April 3, 1996, at 10:00 a.m. Information may be obtained from Cheryl Haliburton, 809 North Judge Ely Boulevard, Abilene, Texas 79601, (915) 672-5633. TRD-9604402.



#### Meetings Filed April 1, 1996

**The Capital Area Planning Council** General Assembly will meet at the Wyndham Southpark Hotel, IH-35 South at Ben White Boulevard, Austin, April 10, 1996, at Noon. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9604481.



# 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.

## Coastal Coordination Council

### Rule Text Omitted

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(h)(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 28, 1996.

TRD-9604469      Garry Mauro  
Chairman  
Coastal Coordination Council

Filed: March 29, 1996

◆            ◆            ◆

## State Council on Competitive Government

### Notice of Vendor Forum

#### 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 and 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.

#### FOURTH VENDOR FORUM:

Wednesday, April 24, 1996, from 10:00 a.m. to 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 29, 1996.

TRD-9604454      David Ross Brown  
Assistant General Counsel  
State Council on Competitive Government

Filed: March 29, 1996

◆            ◆            ◆

## State Board for Educator Certification Executive Director Job Posting

The State Board for Educator Certification seeks qualified Executive Director for new state agency overseeing licensure of Texas educators. The Executive Director reports to a 15-member board and must possess five years of executive management experience, including education, management, finance, budget, and planning experience. To obtain official posting call Rebecca Contreras at (512) 463-5873. Salary \$60-75,000.

Interested professionals should submit a uniform State of Texas application by April 15, 1996 to: State Board for Educator Certification, Chairman Jim Nelson, in care of Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

Issued in Austin, Texas on April 1, 1996.

TRD-9604486      Pete Wassdorf  
Deputy General Counsel  
State Board for Educator Certification

Filed: April 1, 1996

◆            ◆            ◆

## Texas Employment Commission

### Contract Awards

In accordance with Chapter 81, Texas Labor Code, the Texas Employment Commission (TEC) furnishes this notice of contract awards.

**The following Request for Proposals were published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3495).**

Description of Service. The contractor will develop respite care information services for working parents of children with special needs in a nine-county area. Name of Contractor. The contractor selected is Children's Enterprise, Inc., 3628 50th Street, #B, Lubbock, Texas, 79413. Contact: Stacy Quisenberry, (806) 749-5007. Amount of Contract. The amount of the contract is \$30,000. Due Date. The contract period is October 1, 1995, to September 31, 1996.

Description of Service. The contractor will plan, develop and implement a child care resource and referral agency in McAllen, Texas. Name of Contractor. The contractor selected is Corporate Fund for Children, 1300 N. Francisco Avenue, Mission, Texas 78572. Contact: Margie Caldron, (512) 472-9971. Amount of Contract. The amount of the contract is \$30,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand information services for elderly and disabled dependents in a ten-county area through improvements to computer and telephone systems; contractor will also continue the development of services for employers. Name of Contractor. The contractor selected is Family Eldercare, Inc., 3710 Cedar Street, Suite 229, Austin, Texas 78705. Contact: Karen Langley, (512) 450-0844. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is October 1, 1995, to September 31, 1996.

Description of Service. The contractor will expand services to include respite services and services for disabled dependents; it will continue to study and seek to improve retention rates of family day home providers in a six-county area. Name of Contractor. The contractor selected is First Texas Council of Campfire, 2700 Meacham Boulevard, Fort Worth, Texas 76137-4699. Contact: Sue Matkin, (817) 831-2111. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is October 1, 1995, to September 31, 1996.

Description of Service. The contractor will design and implement model resource and referral service for employees of small businesses. This project is intended to provide some relief for costs associated with public information services in R&R agencies. Name of Contractor. The contractor selected is Initiatives for Children, Inc., 5433

Westheimer Road, Suite 620, Houston, Texas 77056-5305. Contact: Susan Kruk, (713) 235-1017. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is October 1, 1995, to September 31, 1996.

Description of Service. Contractor will develop and implement special information services for working caregivers and serve 160 caregivers over the program year. Name of Contractor. The contractor selected is Sheltering Arms, Inc., 701 North Post Oak, Suite 500, Houston, Texas 77024. Contact: Andrea Witt, (713) 685-6578. Amount of Contract. The amount of the contract is \$26, 688. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand information services for working families, providing information and follow-up services to 360 families over the program year. Name of Contractor. The contractor selected is United Way of Brazoria County, P.O. Box 1959, Angleton, Texas 77516-1959. Contact: Chris Kidwell, (409) 265-6181. Amount of Contract. The amount of the contract is \$34,014. Due Date. The contract period is October 1, 1995, to September 30, 1996.

Description of Service. The contractor will expand the Information, Resource & Referral capabilities for dependent care resources in rural areas. Name of Contractor. The contractor selected is Williamson County and Cities Health District, 211 Commerce Cove, Suite 109, Round Rock, Texas 78664. Contact: Julia Howard, (512) 255-7841. Amount of Contract. The amount of the contract is \$33,713. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will develop a community child care enhancement project for children in need of specialized care, and develop a child care resource manual. Name of Contractor. The contractor selected is United Way of Grayson County, P.O. Box 1112, Sherman, Texas 75091. Contact: Nadean Dean, (903) 893-1920. Amount of Contract. The amount of the contract is \$25,116. Due Date. The contract period is October 1, 1995, to September 30, 1996.

Description of Service. The contractor will establish a full-time information specialist position for a public dependent care information line to provide working parents with information on care for dependent children. Name of Contractor. The contractor selected is the YWCA of El Paso, Del Norte Region, 1918 Texas Street, El Paso, Texas 79901. Contact: Isabella Elias, (915) 533-7475. Amount of Contract. The amount of the contract is \$34,115. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will redesign referral services to reach more parents at a lower cost; also, it will expand, develop and deliver information resources for children with special needs. Name of Contractor. The contractor selected is The Child Care Group, 1221 River Bend Drive, Suite 250, Dallas, Texas 75247. Contact: Farida Shipchandler, (214) 905-3509. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will provide special information services for older school-age children. Name of Contractor. The contractor selected is the Houston Area Women's Center, 1010 Waugh Drive, Houston, Texas 77019. Contact: Ann Thompson, (713) 528-6798. Amount

of Contract. The amount of the contract is \$30,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will develop afternoon and evening child care services for 50 children whose parents are participating in educational or employment training. Name of Contractor. The contractor selected is the American Institute for Learning, 422 Congress Avenue, Austin, Texas 78701. Contact: Rebecca Benz, (512) 472-8220. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will provide a continuation of school age child care for children whose families are receiving services through the crisis center. The program includes respite services for families of children with special needs. Name of Contractor. The contractor selected is the Child Crisis Center of El Paso, 2100 North Stevens, El Paso, Texas 79930. Contact: Stephanie Dodson, (915) 562-7955. Amount of Contract. The amount of the contract is \$34,564. Due Date. The contract period is October 1, 1995, to September 30, 1996.

Description of Service. The contractor will expand a school age program for 40 children, to include a parent involvement/education component. Name of Contractor. The contractor selected is Communities in Schools, San Antonio, 1850 Grandstand Drive, San Antonio, Texas 78238. Contact: Magdalena Alvarado, (210) 520-8440. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will establish a school age child care summer program for children with special needs. Name of Contractor. The contractor selected is the YWCA of Lubbock, 3101 35th Street, Lubbock, Texas 79413. Contact: Betty E. Wheeler, (806) 792-2723. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is October 1, 1995, to September 30, 1996.

Description of Service. The contractor will establish a school age child care program in rural areas. Name of Contractor. The contractor selected is Family Outreach Resources, P.O. Box 7000, Suite 4A, Palestine, Texas 75802. Contact: Linda Hollie, (903) 723-8294. Amount of Contract. The amount of the contract is \$34,958. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand an after school program model to the full school year, with special curriculum based on children's individual needs. Name of Contractor. The contractor selected is the Grapevine-Colleyville ISD Community Education, 3051 Ira E. Woods Avenue, Grapevine, Texas 76051-3987. Contact: Linda James, (817) 488-9588. Amount of Contract. The amount of the contract is \$34,488. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand an extended day program to two new sites, providing a full day summer program for 30 students. 10 students will receive scholarships. Name of Contractor. The contractor selected is the Panhandle Plains Council of Camp Fire, 2808 Canyon Drive, Amarillo, Texas 79109. Contact: Freddy Black, (806) 373-7922. Amount of Contract. The amount of the contract is \$27,152. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand an extended-day program to an 11-month schedule, with a full day program offered in June and July. Name of Contractor. The contractor selected is Winters ISD, P.O. Box 125, Winters, Texas 79567. Contact: Terry Wyatt, (915) 754-5577. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand an existing program to provide 30 additional slots, and an intergenerational component. Name of Contractor. The contractor selected is the YWCA of Metropolitan Dallas, 4621 Ross Avenue, Dallas, Texas 75204. Contact: Phyllis Newman, (214) 826-9922. Amount of Contract. The amount of the contract is \$30,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand a school age child care program for children with exceptional emotional needs. Name of Contractor. The contractor selected is Clayton Child Care Services, 1300 West Lancaster Avenue, Fort Worth, Texas 76102. Contact: Clarie Barrett, (817) 877-1663. Amount of Contract. The amount of the contract is \$30,000. Due Date. The contract period is October 1, 1995, to September 30, 1996.

Description of Service. The contractor will work with area employers to develop a plan for improving the quality of child care services in Austin. Name of Contractor. The contractor selected is the City of Austin Department of Health and Human Services, P.O. Box 1088 (South Congress), Austin, Texas 78768. Contact: Betty Padilla, (512) 326-4216. Amount of Contract. The amount of the contract is \$20,000. Due Date. The contract period is October 1, 1995, to September 30, 1996.

Description of Service. The contractor will develop and improve school age child care services by increasing public awareness of the importance of and the benefits of supervised, appropriate, high quality school age child care; also by conducting school age child care training and by assisting parents in selecting appropriate school age child care. Name of Contractor. The contractor selected is the University of North Texas, P.O. Box 13 646, Denton, Texas 76203. Contact: Tracey Lane, (817) 565-3939. Amount of Contract. The amount of the contract is \$34,774. Due Date. The contract period is September 1, 1995, to August 31, 1996.

**The following Request for Proposals were published in the May 19, 1995, issue of the *Texas Register* (20 TexReg 3782).**

Description of Service. The contractor will provide expansion of intercession services for families on year-round school calendars. The program will include "transition camps" during the summer for 5th grade students entering middle school. Name of Contractor. The contractor selected is Austin, ISD, 1111 West 6th Street, Austin, Texas 78703-5399. Contact: Michele Vinet, (512) 414-1616. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand after-school and intercession programs to include additional components, including peer tutoring, "Hooked on Fishing-Not on Drugs" and Parent Training. Name of Contractor. The contractor selected is Hitchcock ISD, 8117 Highway 6, Hitchcock, Texas 77563. Contact: Jane Ankney, (409) 986-6536. Amount of Contract. The amount of the con-

tract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand and after-school and holiday program to one additional site serving up to 50 children. Recruitment of fee support for at-risk students is included in this year's plan. Name of Contractor. The contractor selected is Judson ISD, P.O. Box 249, Converse, Texas 78109. Contact: Beverly Oliver, (210) 659-9600. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will provide summer and school holiday care for children, ages 8-12, whose parents participate in the Even Start Family Literacy Program. Name of Contractor. The contractor selected is Paris ISD, 136 Grand Avenue, Paris, Texas 75460. Contact: Pam Christian, (903) 737-4340. Amount of Contract. The amount of the contract is \$9,973. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will provide a start-up after-school program in a rural area serving 60 children. N.E. Texas Communities in Schools and East Texas Campfire are collaborators on this project. Name of Contractor. The contractor selected is Pittsburg ISD, 306 Texas Street, Pittsburg, Texas 75686. Contact: Debbie Porter, (903) 856-1142. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand an after-school program to include a special targeted curriculum for the area's children and parents. Name of Contractor. The contractor selected is San Felipe Del Rio ISD, P.O. Box 420218, Del Rio, Texas 78842. Contact: Julio Ramos, (210) 774-9201. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand its after-school and intercession programs. A special computer learning math program will be enhanced with additional software. Name of Contractor. The contractor selected is Victoria ISD, P.O. Box 1759, Victoria, Texas 77902. Contact: Cheryl Elam, (512) 576-3131. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will expand a school age child program to a third site and add a staff training program. Name of Contractor. The contractor selected is Brenham ISD Community Education, P.O. Box 1147, Brenham, Texas 77834. Contact: Kim Olive, (817) 337-3734. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will establish school age child care programs at three additional sites. Name of Contractor. The contractor selected is Keller ISD, 328 Lorine, Keller, Texas 76248. Contact: Clarie Barrett, (817) 337-3200. Amount of Contract. The amount of the contract is \$35,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will start up an after school program for rural students. Name of Contractor. The contractor selected is Giddings ISD, P.O. Box 389, Giddings, Texas 78942. Contact: Alonzo Wood, (409) 542-3661. Amount of Contract. The amount of the

contract is \$20,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will use the 4-H After School and the Safe Child Program to develop a curriculum for after-school child care programs at two sites. Name of Contractor. The contractor selected is Snyder ISD, 2901 37th Street, Snyder, Texas 79549. Contact: Gayle Lomax, (915) 573-5401. Amount of Contract. The amount of the contract is \$30,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Description of Service. The contractor will provide affordable child care service, which will improve children's academic performance, to parents. Service will be provided at a reduced rate to parents who qualify for free or reduced lunches. Name of Contractor. The contractor selected is Royse City ISD, P.O. Box 479, Royse City, Texas 75189. Contact: William Fort, (214) 635-2413. Amount of Contract. The amount of the contract is \$25,000. Due Date. The contract period is September 1, 1995, to August 31, 1996.

Issued in Austin, Texas, on March 29, 1996

TRD-9604453 J. Ferris Duhon  
Legal Counsel  
Texas Employment Commission

Filed: March 29, 1996



## Texas Department of Health Extension of Comment Period/Notice of Public Hearings

The Texas Department of Health (department) published a proposed amendment to 25 Texas Administrative Code §38.6 relating to pharmacy providers for the Chronically Ill and Disabled Children's Services Program (CIDC), in the February 9, 1996, issue of the *Texas Register* (21 TexReg 933). The department is extending the comment period on the proposed amendment through April 19, 1996. The department will be holding a public hearing on Friday, April 19, 1996 to receive comments on the proposed amendment. The hearing will begin at 10:00 a.m. in Room M653 of the Moreton Building, at the Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756.

Written comments on the proposed amendment should be submitted to Dr. Susan C. Penfield, Director, Children's Health Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. For more information you may call Dr. Penfield's office at (512) 458-7111, extension 3104.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604311 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: March 27, 1996



The Texas Department of Health (department) published proposed amendments to 25 Texas Administrative Code, §§29.1501-29.1504, concerning the requirements for hearing aid services in its purchased health services rules. The amendments were published in the February 20, 1996,

issue of the *Texas Register* (21 TexReg 1347). The department is extending the comment period on the proposed amendments through April 22, 1996. The department will be holding a public hearing on Monday, April 22, 1996 to receive comments on the proposed amendments. The hearing will begin at 9:00 a. m. in the Board Room (Moreton Building), at the Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756.

Written comments on the proposed amendment should be submitted to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. For more information you may call Ms. Salisbery's office at (512) 338-6521.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604344 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: March 27, 1996

### Request for Proposals-Tetracycline Biomarker Analysis

**Purpose.** The Texas Department of Health (department), Zoonosis Control Division (ZCD) is requesting proposals for the testing of mammalian specimens collected by the department for the purpose of evaluating the success of the 1996 Oral Rabies Vaccination Program.

**Description.** The Department is seeking a contractor to perform Tetracycline Biomarker Analysis on approximately 680 specimens collected by the department from baited areas. The specimens will consist of 69% coyote and gray fox, plus 31% non-target species such as raccoon, skunk, wild boar, and armadillo. The department will use the competitive procurement process to select a contractor to perform this testing.

**Eligible Applicants.** Eligible offerors include any applicant capable of meeting the Performance Requirements.

**Limitations.** Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and all offers received in response to the RFP and cancel the RFP if it is deemed in the best interest of the department.

**Term.** The tentative effective date for the contract is May 24, 1996.

**Deadlines.** All proposals to be considered for funding through this RFP must be received by 5:00 p.m., CST, April 26, 1996, at the Texas Department of Health, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756 (Attention: M.G. Fearneyhough, D.V.M.), telephone (512) 458-7255. Proposals received after this deadline will not be accepted.

**Evaluation and Selection.** An internal evaluation selection panel designated by (ZCD) will rank and score the proposals. The evaluation of the RFP will be based upon the following criteria: ability to meet Performance Requirements, cost per specimen, and evidence that the applicant has the capacity and resources to accomplish the project.

Issued in Austin, Texas on March 29, 1996.

TRD-9604441 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: March 29, 1996

### Heart of Texas Council of Governments Public Hearings

The Heart of Texas Council of Governments will have two public meetings that are being held to discuss and gather information about the formation of a local workforce development board (LWDB) for the Heart of Texas Region. Copies of the Texas Workforce Commission rules concerning creation of the Local Workforce Development Boards will be distributed at the meeting but copies may be received in advance by contacting the Heart of Texas Council of Governments. These public meetings, which are being held in accordance with the Texas Administrative Code, §252.1, Requirements for Formation of Local Workforce Development Boards, will be held in the following locations:

Waco, Texas

Waco Tribune-Herald Conference Room

900 Franklin Avenue, Waco, Texas

April 4, 1996-1:30 p.m.

Mexia, Texas

Mexia Civic Center

101 South McKinney, Mexia, Texas

April 12, 1996-10:00 a.m.

The Chief Elected Officials will consider all public comments and any written comments received by April 15, 1996 to determine whether a local Workforce Development Board will be formed in the Heart of Texas Workforce Development Area. Written comments may be sent to the Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas 76701.

Any questions or additional information about these public hearings or if you have special needs for accommodations, please call Latricia Adams or Leon Willhite at (817) 756-7822.

Issued in Waco, Texas, on March 26, 1996

TRD-9604288 Donna Teat  
Executive Assistant  
Heart of Texas Council of Governments

Filed: March 27, 1996

### Texas Department of Insurance Notice

Four public hearings originally scheduled before the Commissioner of Insurance for April 18, 1996 at 9:00 a.m., have been rescheduled to begin an hour later at 10:00 a.m. The first docket item to be heard on April 18, 1996 at 10:00 a.m. is Docket Number 2200, to consider the adoption of proposed amendments to 28 TAC §§7.201-7.205, and §7.209 concerning the administrative regulation of the Insurance Holding Company System Regulatory Act. Notice of this hearing was published in the March 5, 1996, issue of the *Texas Register* (21 TexReg 1793).



The second item to be heard is Docket Number 2209, concerning a staff filing to amend Section I A of the Texas Experience Rating Plan of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan of Workers Compensation and Employers' Liability Insurance. Notice of this hearing was published in the March 5, 1996, issue of the *Texas Register* (21 TexReg 1776).

The third item to be heard is Docket Number 2211, concerning a staff petition to the amend the Texas Automobile Rules and Rating Manual to adopt new and/or adjusted 1992 through 1996 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Notice of this hearing was published in the March 5, 1996, issue of the *Texas Register* (21 TexReg 1776).

The fourth item to be heard is Docket Number 2212, concerning a staff petition to amend the Texas Automobile Rules and Rating Manual to adopt new and/or adjusted 1996 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. This proposal will be considered together with Docket Number 2211. Notice of this hearing was published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2099).

Issued in Austin, Texas, on March 27, 1996.

TRD-9604296      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: March 27, 1996



### 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 Fee For Service, Inc., (doing business under the assumed name of Fee For Service Insurance Agency, Inc.), a foreign third party administrator. The home office is Tampa, Florida.

Application for admission to Texas of ACMG, Inc., a foreign third party administrator. The home office is Miamisburg, Ohio.

Application for incorporation in Texas of A. Lamar Casparis, a domestic third party administrator. The home office is Odessa, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on March 27, 1996.

TRD-9604297      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: March 27, 1996



## Texas Natural Resource Conservation Commission

### Declaration of Administrative Completeness and Notice of Application of Obtain a Texas Weather Modification License

Weather Modification Incorporated; Application Number 9645327 for a Texas weather modification license for the fiscal year 1996, under the Texas Water Code Chapter 18, Rules of the Texas Natural Resource Conservation Commission (the "Commission") 30 TAC Chapter 289, and the Texas Weather Modification Act of 1967. Issuance of a license merely certifies that the person(s) or organization holding the license is (are) competent to conduct weather modification activities. A permit is required before the licensee can actually begin conducting weather modification/control activities. Issuance of a license is contingent upon the applicant paying the license fee, and demonstrating competence in the field of meteorology which is reasonably necessary to engage in weather modification and control operations. The applicant has not previously held a Texas weather modification license. A summary of the information contained in the application includes the names of the meteorologists who are to conduct and be in charge of weather modification operations. The Commission's Weather Modification Advisory Committee, at a March 27, 1996 meeting in Austin, Texas, examined the license application and additional related materials and recommended that the license be issued. The Commission staff concurs with the Committee's recommendation.

The Executive Director may issue the license unless a written hearing request is filed within 20 days from issuance of this notice (notice issued on March 29, 1996). To request a hearing, you must submit the following: your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; the name of the applicant and the application number; the statement "I/we request a public hearing;" a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the license and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing on this application must be submitted in writing during the 20-day notice period to the Chief Clerk's Office, MC 105, TNRCC, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-3315. Written public comments may also be submitted to the Chief Clerk's Office during the notice period. For information concerning technical aspects of the permit, contact George Bomar in the Water Planning and Assessment Division, Weather Modification Section, MC 160, at the same P.O. Box address stated previously, or (512) 239-0770. For information concerning hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same P.O. Box address stated previously, or (512) 239-6363.

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

Filed: March 29, 1996

◆           ◆           ◆

## Notice of Application to Appropriate Public Waters of the State of Texas

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued during the period March 21, 1996 through March 22, 1996:

Benbrook Winchester Limited Partnership; Application Number 5546 for a permit pursuant to §11.121, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq for authorization to maintain nine existing on-channel reservoirs (referred to as Lake Numbers 1, 2, 7, 8, 11, 12, 13, 14, and 18) ranging in capacity from 0.7 acre-feet to 66 acre-feet with a total capacity of 153.7 acre-feet for in-place recreational use on three unnamed tributaries of Henrietta Creek, tributary of Denton Creek, tributary of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin. Lake Numbers 1, 7, 8, 11, 12, 13, and 14 are all on the same unnamed tributary of Henrietta Creek, and Lake Numbers 2 and 18 are each on separate unnamed tributaries of Henrietta Creek. The applicant has indicated that evaporative losses from the lakes will be made up from the use of groundwater wells. The lakes are located in Denton County, approximately 18 miles southwest of Denton, Texas.

City of Palestine seeks an extension of time to commence and complete modifications of dams and reservoirs, authorized by Permit Number 5309, pursuant to §11.145, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq. Pursuant to 30 TAC §§295.159, the Commission will also consider whether the applicant demonstrated sufficient due diligence and had justification for the delay of this project. Applicant was issued Permit Number 5309 on January 3, 1991, authorizing City to maintain and modify four dams and reservoirs in Anderson County, Texas. The reservoirs are referred to as Wolf Creek Lake, Lower City Lake, Upper City Lake, and Blue Lake. Modifications to these dams were to have commenced on or before January 3, 1993 and completed by January 3, 1994. Applicants were granted an extension of time in 1992 requiring construction modifications be commenced by January 3, 1995 and completed January 3, 1997. Applicants completed improvements to the dam associated with Wolf Creek Lake December 1995. City of Palestine is requesting an extension of time to commence modifications on remaining structures as follows: Blue Lake-July 15, 1996; Lower City Lake-July 15, 1997; and Upper City Lake-July 15, 1998. The completion date for all improvements will be January 31, 1999. The City states reason for delay in completing construction is due to limited financial and manpower resources. Additionally, delays have resulted from design considerations concerning the frequency of downstream flooding. City staff have been working with TNRCC's Dam Safety Team to address this issue. It should be noted that what was considered to be the highest hazard dam (Wolf Creek) has been completed.

John H. Burris and wife, Edith L. Burris, Application Number 4594A to amend Permit Number 4271 pursuant to §11.122, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq. Permit Number 4271 was issued January

1986 and authorized maintenance of an existing dam and reservoir on Lattas Creek, tributary of San Fernando Creek, tributary of Callo Del Grullo, tributary of Baffin Bay, Nueces-Rio Grande Coastal Basin, and impoundment of not to exceed 1.67 acre feet of water in the reservoir. Permittees were also authorized to divert and use not to exceed 150 acre-feet of water per annum from the perimeter of the reservoir and from two specific points on Lattas Creek at a maximum combined rate of 1.23 cfs (550 gpm) to irrigate 120 acres of land in Jim Wells County, approximately four miles southeast of Alice, Texas. A special condition in the permit states permit was issued subject to availability of water from sewage effluent in Lattas Creek and subject to re-examination should the wastewater plant(s) cease or reduce discharge into Lattas Creek. Applicants are seeking authorization to increase the authorized diversion and use of irrigation water from 150 acre-feet to 240 acre-feet per annum, and to increase the combined maximum diversion rate from 1.23 cfs (550 gpm) to 1.67 cfs (750 gpm).

Texas A&M University at Galveston; Application Number 5547 for a permit pursuant to §11.121, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq to divert and use not to exceed 548 acre-feet of water per annum from Galveston Bay, San Jacinto-Brazos Coastal Basin to irrigate 1.38 acres comprising seven impoundments of tamug seagrass located within a 60 acre tract of land in the southwest section of the Pelican Island, approximately 1/4 mile north of the Pelican Island Bridge in Galveston County, Texas.

The Executive Director will act on these applications unless a written hearing request that includes the following information is filed within 30 days after newspaper publication of the notice of application: the name, mailing address, and daytime phone number of the person requesting the hearing; the name of the applicant and the application number; the statement "I/we request a public hearing;" a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not act on the application and will forward the application and hearing request to the TNRCC Commissioners for consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing must be submitted in writing during the 30-day notice period to the Chief Clerk's Office, MC105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3315.

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

TRD-9504417                   Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 29, 1996

◆           ◆           ◆

The following matters have reached settlement agreements of all issues in controversy. Therefore, they have been remanded by the State Office of Administrative Hearings (SOAH) to the Executive Director of the TNRCC for administrative disposition.

Information concerning these matters may be obtained by contacting the TNRCC Chief Clerk's Office MC105, P.O. Box 13087, Austin, Texas 78711, or by at (512) 239-3300.

Calico Water Supply for a rate increase; TNRCC Docket Number 96-0075-UCR; SOAH Docket Numbers 582-96-0149 (Application Number 30980-R).

Byron E. Benoit doing business as Southwest Territory Water Company; TNRCC Docket Number 96-0117-UCR; SOAH Docket Number 582-96-0145; CCN Number 11813; (Application Number 30928-G).

M. D. Williamson doing business as Raintree Lakes Water Company; TNRCC Docket Number 95-1575-UCR; SOAH Docket Number 582-95-1640; CCN Number. 12418; (Application Number 30956-G).

Glenn Dexter doing business as Forest Springs Water Supply Corporation; TNRCC Docket Number 96-0290-UCR; SOAH Docket Number 582-96-0308; CCN Number 10684; (Application Number 32001-C).

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

TRD-9504412 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 29, 1996

◆ ◆ ◆  
**Notices of Application for Temporary  
Permits to Appropriate Public Waters  
of the State of Texas**

County of Bell; Application Number TA-7622 For a Temporary Permit to Appropriate Public Water of the State of Texas pursuant to Texas Water Code, §11.138 and Texas Administrative Code §§295.61-62, 295.125, 295.154, 295.174 and 297.13 to divert and use 50 acre-feet of water within a three year period from various streams, creeks, tributaries and rivers of the Brazos River, Brazos River Basin, in Bell County, Texas. Water will be diverted from various road crossings at streams, creeks, and rivers at a maximum diversion rate of 1.56 cfs (700 gpm) for industrial use. The downstream appropriators that may be affected by this permit are in Bell, Falls, and Milam Counties. The temporary permit, if issued, would be secondary to senior and superior water rights and instream needs.

The Executive Director may issue the permit unless one or more persons file written protests and/or requests for hearing within 20 days from March 19, 1996, which is the date the notice of application was issued.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed, the Executive Director will withhold issuance of the permit. The Commission will review the adequacy of the hearing request(s) and may forward the application to an Administrative Law Judge of the State Office of Adminis-

trative Hearings where an evidentiary hearing may be held. In the event a hearing is held, the Administrative Law Judge of the State Office of Administrative Hearings will submit a recommendation to the Commission for Final decision.

If no protests or requests for hearing are filed, the Executive Director may sign the permit on or after April 8, 1996. 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 Office of the Chief Clerk-Mail Code 105, no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, or by mail to the following address: TNRCC, Office of the Chief Clerk-Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-3315.

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

TRD-9504413 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 29, 1996

◆ ◆ ◆  
**Notice of Applications for Waste  
Disposal Permits**

Issued during the period of March 25-March 29, 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 your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after 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.

Bentwood Estates, Inc., P.O. Box 576, Huffman, Texas 77336-0576; the wastewater treatment facilities are at 2719 Third Street approximately 4,000 feet northeast of the intersection of FM Road 1960 and FM Road 2100, northeast of the incorporated township of Huffman in Harris County, Texas; renewal; 12612-01.

City of Italy, P.O. Box 840, Italy, Texas 76651; the City of Italy Wastewater Treatment Plant; the plant site is approximately 3/4 mile south of State Highway 34 and 1/2 mile east of FM Road 667 in Ellis County, Texas; renewal.

Maple Ridge Investments, Inc., 1708 Bunker Hills, #207, Lewisville, Texas 75056; the wastewater treatment facilities are on the southern bank of Midway Branch, approximately 0.5 mile south of State Highway 121 and 1.2 miles southwest of the intersection of FM Road 544 and State Highway 121, on Holford Prairie Road in Denton County, Texas; renewal; 13545-01.

Town of Oak Ridge, Route 3, Box 325-27, Gainesville, Texas 76240; the Town of Oak Ridge Wastewater Treatment Plant is approximately 1700 feet south of U. S. Highway 82 and approximately 9,800 feet west of Farm-to-Market Road 678 in Cooke County, Texas; renewal; 13514-01.

Ohmstede, Inc., P.O. Box 817, LaPorte, Texas 77571; a manufacturing and repair facility of heat exchangers; the plant site is at 12415 LaPorte Road in the City of LaPorte, Harris County, Texas; renewal; 01318.

Phelps Dodge Refining Corporation, P.O. Box 20001, El Paso, Texas 79998; the copper refinery is in the northeast quadrant defined by the intersection of North Loop Road with the Fort Bliss Railroad Spur in the City of El Paso, El Paso County, Texas; amendment; 00461.

Promised Land Dairy, Incorporated, Route 3 Box 197C, Floresville, Texas 78114; an ice cream, butter production and milk processing plant; the treatment/storage lagoon and irrigation site are adjacent to State Highway 97 approximately four miles southwest of the intersection of State Highway 97 and Loop 181, near the City of Floresville, Wilson County, Texas; new; 03873.

Southwest Water Services, Inc., 6116 North Central Expressway, Dallas, Texas 75206; the Harbor Point Wastewater Treatment Plant; the plant site is approximately 0.25 mile north of FM Road 356 and approximately 0.4 mile west of the intersection of FM Road 356 and Farm-to-Market Road 355 in Trinity County, Texas; renewal; 13547-01.

City of Winfield, P.O. Box 98, Winfield, Texas 75493; the wastewater treatment facilities are approximately 400 feet north of Interstate Highway 30 access road and 1,500 feet west of FM Road 1734 in the City of Winfield in Titus County, Texas; renewal; 12146-01.

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

TRD-9504415 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 29, 1996



## Notice of Opportunity to Comment on Permitting Actions for the week ending March 30, 1996

The following applications will be signed by the Executive Director in accordance with 30 TAC §263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Consideration of the application of Sun Communities Texas Limited Partnership doing business as Branch Creek Estates to Transfer Water CCN Number 11905 from Branch Creek Property, Inc. in Travis County, Texas. (Application #30983-S, Debi Carlson).

Consideration of the application of TCW Supply, Inc. to Transfer Water CCN Number 12762 from Engineered Carbons, Inc.; Amend Water CCN Number 11957; and Cancel Water CCN Number 12762 in Hutchinson County, Texas. (Application #31008-S, Guillermo Zevallos).

Consideration of the application of North Alamo Water Supply Corporation to amend Sewer Certificate of Convenience and Necessity Number 20645 in Cameron County, Texas. (Application #30961-C, Guillermo Zevallos).

Consideration of the application of West Cedar Creek Municipal Utility District to Acquire Facilities and Transfer Water CCN Number 11933 from Ruth Springs Water Co-op; Amend Water CCN Number 11499; Cancel Water CCN Number 11933 in Henderson County, Texas. (Application #31071-S, Albert Holck).

Consideration of the application of City of Laredo to amend Water Certificate of Convenience and Necessity Number 11226 and to Decertificate Portions of CCN Number 12704 Issued to Webb County in Webb County, Texas. (Application #30651-C, Albert Holck).

Consideration of the application of City of Laredo to amend Sewer Certificate of Convenience and Necessity Number 20485 in Webb County, Texas. (Application #30652-C, Albert Holck).

Consideration of the application of Water Services, Inc. to Acquire the Facilities of the Coolcrest Water System and Transfer Water CCN Number 11106 from Haskin Water Supply, Inc. in Bexar County, Texas. (Application #30984-S, Albert Holck).

Consideration of the application of Water Services, Inc., CCN Nuber 11106, to Acquire the Facilities of the Cascade Mobile Village Water System from Haskin Water Supply, Inc. and Cancel Water CCN Number 11105 in Kendall County, Texas. (Application #30985-S, Albert Holck).

Consideration of the application of Water Services, Inc., CCN Number 11106, to Acquire the Facilities of the Oak North Mobile Estates Water System from Haskin Water Company and Cancel Water CCN Number 11108 in Bexar Company, Texas. (Application #30986-S, Albert Holck).

Consideration of the application of Water Services, Inc., CCN Number 11106, to Acquire the Facilities of the Oak Village North Water System from Haskin Water Company and Cancel Water CCN Number 11109 in Comal County, Texas. (Application # 30987-S, Albert Holck).

Consideration of the application of Water Services, Inc., CCN Number 11106, to Acquire the Facilities of the Stage Coach Hills Water System from Haskin Water Company and Cancel Water CCN Number 11111 in Bexar County, Texas. (Application #30988-S, Albert Holck)

Consideration of the application of Water Services, Inc., CCN Number 1106, to Change from Facilities plus 200 feet Certification to Bounded Service Areas in Five Locations in Bexar, Comal and Kendall Counties. (Application #30989-C, Albert Holck).

Consideration of the application of Apple Springs Water Supply Corporation for a Water Certificate of Convenience and Necessity in Trinity County, Texas. (Application #31043-C, Albert Holck).

Application Number 23-865I by the Public Utilities Board of the City of Brownsville for an Amendment to Certificate of Adjudication Number 23-865, as Amended, Pursuant to TWC 11.122. Applicant seeks authorization to sever the 125-acre-feet of Class "A" irrigation rights it owns pursuant to Certificate of Adjudication Number 23-284, as amended, from the Certificate, and combine this right with the rights authorized by Certificate Number 23-865, and amend Certificate 23-865 by changing the purpose of use to municipal use, and change the place of use to the applicant's service are and designate the diversion point in Cameron County. (Mike Howard).

Consideration of the Application of Onion Creek Wastewater Corporation to amend Sewer Certificate of Convenience and Necessity Number 20499 in Travis County, Texas. (Application # 31072-C, Darrell Nichols).

Consideration of the application of the City of McAllen to Transfer a portion of Water CCN Number 10558 from Sharyland Water Supply Corporation, to Transfer a portion of Water CCN Number 11537 from the City of Mission; and Amend Water CCN Numbers 11352, 10558, and 11537; in Hidalgo County, Texas. (Application 30865-C, Vera Poe).

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

TRD-9504416

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 29, 1996

◆ ◆ ◆  
Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony regarding the proposed repeal of 30 TAC Chapter 114, §114.21, concerning the Employer Trip Reduction Program, and proposed revisions to the 1993 Rate-of-Progress SIP for the Dallas/Fort Worth, El Paso, Houston/Galveston, and Beaumont/Port Arthur ozone nonattainment areas; the Post-1996 Rate-of-Progress SIP for the Beaumont/Port Arthur and Houston/Galveston ozone nonattainment areas; the Section 818 Demonstration for the El Paso nonattainment area; the 1990 Base Year Emissions Inventory; and the Employer Trip Reduction SIP.

These SIP revisions are needed to fulfill the requirements of the Federal Clean Air Act Amendments of 1990. To meet requirements of the National Highway Systems Designation Act, the state submitted a proposed Inspection and Maintenance (I/M) SIP revision to EPA by March 27, 1996. The I/M program and the creditable reductions in volatile organic compounds affect many other ozone control programs and SIPs. Additionally, several area source and non-road mobile source categories were studied, which resulted in better emissions inventories. These changes also affect the other SIPs. Therefore, as many SIP revisions as possible are being processed with the I/M SIP revision. Simultaneous processing and public hearings should use staff's and the affected public's time and resources most efficiently, and will help the public understand the extent of the proposed I/M changes

Public hearings on these proposals will be held in Beaumont on May 6, 1996 at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; in Houston on May 7, 1996 at 2:00 and 7:00 p.m. in Conference Room A of the Houston-Galveston Area Council, 3555 Timmons Lane, Houston; in El Paso on May 8, 1996 at 6:00 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; and on May 9, 1996 at 1:00 p.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

Written comments may be mailed to Heather Evans, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or e-mailed to hevans@smtpgate.tnrcc.state.tx.us. All comments should reference Rule Log Number 95155-114-AI. Comments must be received by 5:00 p.m., May 13, 1996. For further

information, please contact Thomas Ortiz at (512) 239-1054 or Elizabeth Johnson at (512) 239-1967.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on March 28, 1996.

TRD-9604349 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: March 28, 1996

◆ ◆ ◆  
**Texas Parks and Wildlife Department**

**Notice of Public Comment Hearing:  
Removal of Sand, Gravel or Marl  
From the Public Waters of the State  
of Texas—Permit Number SNR96-003**

Notice is hereby given that, Upper Trinity Regional Water District, whose address is P.O. Drawer 305, Lewisville, Texas 75067, as of March 13, 1996, filed an administratively complete application with the Texas Parks and Wildlife Department for a non-revenue permit to remove or disturb up to 890 cubic yards of marl from the Elm Fork of the Trinity River, Denton County, by the use of a track backhoe, front-end loader and dump truck at a location south of Lewisville Lake Dam, approximately 4,516 linear feet from intake structure parallel to the GC and SF railroad tracks in an eastward direction where the pipelines will pass under the tracks from north to south.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in Chapter 86 of the Parks and Wildlife Code and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted on Tuesday, April 30, 1996 at 3:00 p.m., Conference Room A-200, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Travis County, Texas, at which time all interested persons may appear and be heard. Comments may be mailed to the Department at the address listed below, or presented orally or in writing at the hearing. Comments sent by mail should be received by the Department prior to the public comment hearing.

In addition, any person who can demonstrate a justifiable interest may request a formal contested case hearing pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, §2001.054. Any person wishing to request such a hearing should submit a written request to Paul Shinkawa at the address listed below. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact which may be suffered by the requestor. Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice as listed below or by the close of the public comment hearing, whichever is later.

Further information concerning any aspect of the application or hearing may be obtained by contacting Paul Shinkawa, Resource Protection Attorney, Resource Protec-

tion, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4433, Fax: (512) 389-8058.

Issued in Austin, Texas, on March 25, 1996.

TRD-9604157 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Filed: March 25, 1996

◆ ◆ ◆  
**Public Utility Commission of Texas**  
**Notice of Intent to File Pursuant to  
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 Fort Worth ISD in Fort Worth, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Fort Worth ISD in Fort Worth, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15553.

The Application. Southwestern Bell Telephone Company is requesting approval of a 5,741 station addition to the existing PLEXAR-Custom service for Fort Worth ISD. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on March 29, 1996.

TRD-9604437 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: March 29, 1996

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Crowley ISD in Crowley, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Crowley ISD in Crowley, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15559.

The Application. Southwestern Bell Telephone Company is requesting approval of a 10 station addition to the existing PLEXAR-Custom service for Crowley ISD. The geographic service market for this specific service is the Crowley, 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 29, 1996.

TRD-9604438 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: March 29, 1996

◆ ◆ ◆  
**Board of Regents, The Texas A&M  
University System**

**Request for Proposal**

The Texas State University System is requesting proposals from firms desiring to provide Financial Services to the Board of Regents and the System universities in the issuance and management of debt. The Texas State University System is composed of Angelo State University in San Angelo; Lamar University components in Beaumont, Orange and Port Arthur; Sam Houston State University in Huntsville; Southwest Texas State University in San Marcos and Sul Ross State University components in Alpine, Del Rio, Eagle Pass and Uvalde.

The Board of Regents of The Texas State University System will name its Financial Services provider for the 1995-1996 fiscal year at its meeting in Austin, Texas on September 1, 1995. Five copies of your proposal must be submitted by 11:00 a.m. on August 25, 1995, to: J. Wiley Thedford, Director of Finance, The Texas State University System, 333 Guadalupe; Tower III, Suite 810, Austin, Texas 78701-3942.

The envelope should be marked in the lower left hand corner, "Proposal for Financial Services".

As a minimum, your proposal should provide a brief description of your firm, its history and general experience. You should also include background information on

the professionals who will be involved in any work for the System. Please indicate the role each individual will assume in the relationship with the System and describe their particular expertise.

The Board will also need information on your prior experience as Financial Services provider for State and local government issuers. Please provide a listing of these issues and issuers in and for which your firm performed these services during the preceding five years, with particular emphasis on Texas college and university issues. If you desire to do so, feel free to list your firm's previous consultant or underwriting experience for the same time period.

You should also include a description of your firm's Affirmative Action program and include any strides made in the employment of women and minorities. Proposals from women, women-owned firms, minorities and minority-owned firms are encouraged.

Regarding compensation for your services, you are required to complete and sign the Schedule of Financial Services Fees and include the completed schedule in your proposal. The schedule is available on request.

Any additional information is welcomed. If you have questions, please call Mr. Thedford at (512) 463-1808.

A copy of your proposal will be shared with members of the Board's Finance Committee. Recommended action will be considered by the Board of Regents on September 1, 1995. If the full Board desires to hear oral presentations at that time, you will be notified in advance.

Issued in Austin, Texas on March 29, 1996.

TRD-9604425 Vickie Running  
Secretary of the Board  
Board of Regents, The Texas A&M  
University System

Filed: March 29, 1996

◆ ◆ ◆

# Texas Register Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

## **Texas Natural Resource Conservation Commission, Title 30**

- Chapter 285** \$20     update service \$15/year    (*On-Site Wastewater Treatment*)  
 **Chapter 290** \$20     update service \$15/year    (*Water Hygiene*)  
 **Chapter 330** \$45     update service \$15/year    (*Municipal Solid Waste*)  
 **Chapter 334** \$35     update service \$15/year    (*Underground/Aboveground Storage Tanks*)  
 **Chapter 335** \$25     update service \$15/year    (*Industrial Solid Waste/Municipal  
Hazardous Waste*)

Update service should be in  printed format     3 1/2" diskette     5 1/4" diskette

## **Texas Workers Compensation Commission, Title 28**

- Update service \$25/year

## **Texas Register Phone Numbers**

Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 463-5564
Texas Administrative Code	(512) 463-5565

## **Information For Other Divisions of the Secretary of State's Office**

Executive Offices	(512) 463-5701
Corporations/ Copies and Certifications	(512) 463-5578
Direct Access	(512) 463-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections Information	(512) 463-5650
Statutory Documents Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials	(512) 463-5552
Uniform Commercial Code Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705



Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

**Change of Address**

**Back Issue**

\_\_\_\_\_ Quantity

Volume \_\_\_\_\_,

Issue # \_\_\_\_\_

*(Prepayment required  
for back issues)*

**New Subscription (Yearly)**

Printed  \$95

Diskette  1 to 10 users \$200

11 to 50 users \$500

51 to 100 users \$750

100 to 150 users \$1000

151 to 200 users \$1250

More than 200 users--please call

Online BBS  1 user \$35

2 to 10 users \$50

11 to 50 users \$90

51 to 150 users \$150

151 to 300 \$200

More than 300 users--please call

NAME \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

Customer ID Number/Subscription Number \_\_\_\_\_

*(Number for change of address only)*

**Bill Me**

**Payment Enclosed**

Mastercard/VISA Number \_\_\_\_\_

Expiration Date \_\_\_\_\_ Signature \_\_\_\_\_

Please make checks payable to the Secretary of State. Subscription fees are not refundable.  
Do not use this form to renew subscriptions.

\_\_\_\_\_  
\_\_\_\_\_  
Second Class Postage

PAID

Austin, Texas  
and additional entry offices  
\_\_\_\_\_  
\_\_\_\_\_