

TEXAS REGISTER

Volume 21, Number 32 May 3, 1996

Pages 3747-3857



This month's front cover artwork:

Artist: Pedro Torres

12th grade

PSJA North High School, PSJA ISD, Pharr

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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.

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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
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THE GOVERNOR

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

Appointments Made April 4, 1996

To be chairman of the **Texas Board of Professional Land Surveying** for a term at the pleasure of the Governor. Mr. Johnson will be replacing Char Rothrock of Houston who is deceased.

To be members of the **Children's Trust Fund of Texas Council** Anne C. Crews for a term to expire September 1, 2001, replacing Peggy B. Smith, Ph. D. Peggy B. Smith, Ph.D. for a term to expire September 1, 1997, filling the unexpired term of Connie Aguilar Sonnen.

Appointments Made April 9, 1996

To be a member of the **Texas Turnpike Authority Board of Directors** for a term to expire February 15, 2001: Donald D. Dillard, 6914 Windy Ridge, Dallas, Texas 75248. Mr. Dillard will be replacing Philip Montgomery of Dallas whose term expired.

To be a member of the **Texas Turnpike Authority Board of Directors** for a term to expire February 15, 1997: Donna R. Parker, 6312 Mesa Ridge Drive, Fort Worth, Texas 76137. Mrs. Parker will be filling the unexpired term of Michael Y. Chou of Houston who resigned.

To be a member of the **State Board of Examiners of Dietitians** for a term to expire September 1, 2001: Ethelind S. Gibson, 3601 East Starr Avenue, Nacogdoches, Texas 75961. Mrs. Gibson is being reappointed.

To be a member of the **State Board of Examiners of Dietitians** for a term to expire September 1, 2001: Patricia Mayers Krug, 8903 Drowsy Lane, Converse, Texas 78109. Mrs. Krug will be replacing Cheryl Porter of Midland who resigned.

To be a member of the **State Board of Examiners of Dietitians** for a term to expire September 1, 2001: Dorothy M. Shafer, 212 Linda Drive, Fredericksburg, Texas 78624. Mrs. Shafer will be replacing Pattye Greer of Nacogdoches whose term expired.

Appointments Made April 12, 1996

To be chair and vice-chair of the **Battleship Texas Advisory Board** Judge Carter Casteel of New Braunfels as chair and Charles A. Alcorn of Houston as vice-chair. Judge Casteel will be replacing Hugh W. Hardy of Houston as chair. Mr. Alcorn will replace Dr. Joshua Hill, Sr. of Houston as vice-chair. General Hardy and Dr. Hill will continue to serve on the board.

Appointments Made April 15, 1996

To be a member of the **Texas Commission on Alcohol and Drug Abuse** for a term to expire February 1, 1997: Gene Shull, 1310 Roseland Boulevard, Tyler, Texas 75701. Mr. Shull will be filling the unexpired term of Murphy George of Lufkin who resigned.

To be a member of the **Texas Workers' Compensation Insurance Fund Board of Directors** for a term to expire February 1, 1999: Ernesto Ancira, Jr., 9103 Autumn Leaf, San Antonio, Texas 78217. Mr. Ancira will be filling the unexpired term of Fernando Reyes, Jr. of San Antonio who resigned.

To be chair of the **State Seed and Plant Board** for a term at the pleasure of the Governor. Dr. Dick L. Auld will be replacing Dr. Ed Runge of College Station as chair. Dr. Runge no longer serves on the board.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1997: Dr. Dick L. Auld, 5615 85th Street, Lubbock, Texas 79424. Dr. Auld is being reappointed.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1997: Dr. A. James Allison, 52 Fannin Drive, Tulia, Texas 79088. Dr. Allison is being reappointed.

To be a member of the **State Seed and Plant Board** for a term to expire October 6, 1997: W. David Worrall, Ph.D., 4609 Foster Road, Vernon, Texas 76384. Dr. Worrall will be replacing Dr. Ed Runge of College Station whose term expired.

To be a member of the **Egg Marketing Advisory Board** for a term to expire September 27, 2001: Terry C. Wright, Route 2, Box 2155, Gilmer, Texas 75644. Mr. Wright will be replacing Terry Alan Legan of Dallas whose term expired.

To be a member of the **Egg Marketing Advisory Board** for a term to expire September 27, 2001: Charles Jeffrey Hardin, 405 Rolling Hill Drive, La Grange, Texas 78945. Mr. Hardin will be replacing David Jenkins of La Grange whose term expired.

To be a member of the **Egg Marketing Advisory Board** for a term to expire September 27, 2001: Leroy Baeza, P.O. Box 977, Fort Davis, Texas 79734. Mr. Baeza will be replacing Hobert H. Joe of Houston who is deceased.

To be a member of the **Egg Marketing Advisory Board** for a term to expire September 27, 1999: Elias (Alex) Rodgers, P.O. Box 433, Eden, Texas 76837, Mr. Rodgers will be replacing Ernest A. Mahard of Prosper whose term expired.

To be members of the **Principal Performance Incentives Board** for terms to expire September 1, 1996 pursuant to Senate Bill Number 1, 74th Legislature: Emily Cole, Davis High School Principal Houston, ISD, 3830 Richmond, Houston, Texas 77027; Ray Deason, Northside Intermediate School Principal, Henderson ISD, P.O. Box 728, Henderson, Texas 75652; Alma Delia Guerrero, Crockett Junior High School Principal, Ector County ISD, P.O. Box 3912, Odessa, Texas 79760; Donald L. McClure, Sr., Principal, Cleto L. Rodriguez Elementary School, San Antonio ISD, 141 Lavaca Drive, San Antonio, Texas 78210; Kenneth Eugene Splawn, Principal, Central Elementary School, Perryton ISD, P.O. Box 1048, Perryton, Texas 79070-1048; Jeanne Paull-Turner, Roquemore Elementary School Principal, Arlington ISD, 1203 West Pioneer Parkway, Arlington, Texas 76013; Romeo Rodriguez, Jr., Cigarroa Middle School Principal, Laredo ISD, 1702 Houston Street, Laredo, Texas 78040.

Issued in Austin, Texas, on April 22, 1996.

TRD-9605597

George W. Bush
Governor of Texas



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.

Opinions

DM-379 (RQ-792). Request from David R. Smith, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether the Family Code, §231.006 regarding eligibility of child support obligors to enter into contracts paid with state funds, applies to Medicaid providers.

Summary of Opinion. Providers that contract to participate in the Texas Medicaid program must submit a statement regarding child support payments pursuant to the Family Code, §231.006.

DM-380 (RQ-863). Request from the Honorable Patrick J. Fleming, Parker County Attorney, One Courthouse Square, Weatherford, Texas 76086, concerning whether the Parker County Hospital District is responsible for the payment of health care costs for inmates in the Parker County Jail who are "eligible residents" of the hospital district under the Health and Safety Code, Chapter 61 and related questions.

Summary of Opinion. The Parker County Hospital District must provide necessary medical and hospital care to inmates of the county jail who reside in Parker County. In the alternative, the hospital district may reimburse the providers of such care. Whether the medical and hospital care the hospital district must provide includes outpatient and inpatient care, dental care, and pharmaceutical costs is a matter left to the discretion of the governing body of the Parker County Hospital District, except that the hospital district may not provide fewer services than required by law.

With respect to an inmate of the Parker County Jail who resides in another county, outside the boundaries of a hospital district or the service area of a public hospital and who is eligible for health care assistance under chapter 61 of the Health and Safety Code, the inmate's county of residence is responsible for the costs of health care assistance provided to the inmate. If the inmate resides within the boundaries of another hospital district, that hospital district is responsible to the Parker County Hospital District for the costs of any health care services the home hospital district is required to provide, as well as any additional services the home hospital district regularly provides. If the inmate resides within the service area of a public hospital, the public hospital must reimburse the Parker County Hospital District for the costs of inpatient and outpatient hospital services provided to an eligible inmate of the Parker County Jail, as well as the costs of any other health care assistance the home public hospital regularly provides. Generally, the inmate's county of residence is responsible for the remaining costs of health care assistance.

If the Parker County Hospital District provides health care assistance to an inmate in the Parker County Jail who is eligible for assistance

under the Health and Safety Code, Chapter 61 and who resides in another county, hospital district, or the service area of a public hospital, the hospital district may bill the governmental entity or entities that is ultimately liable for the costs.

An indigent inmate who resides in another state is ultimately liable for the costs of the medical services he or she has enjoyed. A hospital district may not subrogate itself to the right of an eligible inmate to reimbursement if the inmate resides outside the state.

The Parker County Hospital District must provide to an eligible inmate of the Parker County Jail who is a resident of Parker County all essential medical care. The hospital district also must provide all health care assistance the federal law requires it to provide. Whether a hospital district provides other services is within the discretion of the hospital district's governing body.

In developing its own eligibility standards and application, documentation, and verification procedures, a hospital district may refer for guidance to the standards and application, documentation, and verification procedures the Department of Health has adopted pursuant to Health and Safety Code, §61.006. The hospital district also may refer for guidance to the list of information an applicant for health care assistance from a county must provide, pursuant to Health and Safety Code, §61.007. A hospital district may not adopt eligibility standards or application, documentation, and verification procedures inconsistent with its enabling act, nor may a hospital district establish standards and procedures that circumvent the hospital district's constitutional duty under the Texas Constitution, Article IX, §9.

If a hospital district renders health care assistance to an eligible state prisoner housed in the county jail, the hospital district is paid for the services in accordance with Code of Criminal Procedure, Article 104.002(d) and Health and Safety Code, Chapter 61.

A county may levy taxes for medical costs incurred by eligible inmates of the county jail who reside in another county if the tax is in accordance with the county budget. The county commissioners court must determine that the imposition of the tax for this purpose serves a public purpose.

Whether a particular cause of action is available or appropriate to protest a hospital district governing board's dereliction of duties depends upon the facts of the situation.

DM-381 (RQ-767, RQ-789). Request from the Honorable Fred Hill, Chair, House Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, and the Honorable Doyle Willis, Chair, Select Committee on Veterans Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether police officers of a home-rule city

must comply with the provisions of the Texas Constitution, Article XVI, §1 every two years, and related questions.

Summary of Opinion. The Texas Constitution, Article XVI, §1 requires elected and appointed officers to take an oath of office, and, pursuant to an amendment approved by the voters on November 7, 1989, to sign and file a statement with the secretary of state before taking the oath of office. In the absence of judicial guidance on whether city police officers must take the oath and file the statement required by Article XVI, §1, we cannot determine whether or not a city police officer is an appointed officer for purposes of these provisions. We therefore advise you to err on the side of caution, and to assume that a police officer must take the oath required by the Texas Constitution, Article XVI, §1 until the courts answer this question. The opinion of the Texas Court of Criminal Appeals is especially important, because it is the court that addresses questions of the validity of a search and seizure conducted by a police officer.

Employees of the police department who are not peace officers within the Code of Criminal Procedure, Article 2.12 are not required by the Texas Constitution, Article XVI, §1 to take the oath of office or file the statement.

We find no procedure whereby police officers who have already been hired may comply with the oath provision retroactively, but we advise police officers who have not complied with this provision to do so as soon as possible.

Officers under a civil service system who were appointed and took the constitutional oath before the 1989 amendment need not now file the statement required by that amendment.

Article XVI, §30b provides that the two-year term limitation of Article XVI, §30 does not apply to an officer appointed under a municipal civil service system established by statute or charter, if appointment to and removal from office are governed by the civil service provisions.

Arrests made in accordance with statute by de facto police officers are valid. An individual may be a de facto police officer, even though he has not taken the oath of office.

DM-382 (RQ-757). Request from the Honorable Tim Curry, Criminal District Attorney, Tarrant County, 401 West Belknap, Fort Worth, Texas 76196-0201, concerning whether a district clerk may require an advance deposit of fees for service of process by a sheriff or constable; whether deferred collection of the fee for service of civil process by a sheriff or constable constitutes a loan of credit under the Texas Constitution, Article III, §52, or Article XI, §3.

Summary of Opinion. A district clerk is not authorized to require an advance deposit of fees for service of citation in a case pending in the county in which the sheriff or constable is to serve process. The requirements in the rules of civil procedure that fees for service of process by a sheriff or constable be taxed as costs and that such costs be collected by execution only after judgment do not constitute a lending of credit or a grant of a thing of value in violation of the Texas Constitution. We disapprove of Attorney General Opinions Number 2996, MW-461, JM-533, JM-749, and JM-1229, and any other prior opinions of this office insofar as they state or imply that a mere credit sale of goods or services by the State or one of its political subdivisions violates the credit clauses of the constitution.

DM-383 (RQ-711). Request from the Honorable Thomas Cameron, Winkler County Attorney, P.O. Box 1015, Kermit, Texas 79745, concerning whether a jail facility is subject to ad valorem taxes when a county occupies it for county purposes under a lease-purchase contract with a private entity.

To determine whether a jail facility that a county leases under a lease-purchase agreement is subject to ad valorem taxation, a court must examine the facts and construe relevant contracts. To make such a determination, a court likely would consider whether the county holds equitable title to the jail facility, that is, whether the

county is in possession of the facility and whether the county may compel the lessor to convey legal title to the property if the county fully performs the conditions specified in the contract.

DM-384 (RQ-862). Request from the Honorable John Vance, Dallas County District Attorney, 411 Elm Street, Dallas, Texas 75202, and the Honorable Hardy L. Wilkerson, Howard County Attorney P.O. Box 2096, Big Spring, Texas 79721, concerning whether the Family Code, §1.045 and §1.07(a)(1) requiring an applicant for a marriage license to state under oath that he or she does not owe delinquent court-ordered child support, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Summary of Opinion. Family Code, §1.045 and §1.07(a)(1), requiring an applicant for a marriage license to state under oath that he or she does not owe delinquent court-ordered child support, unnecessarily impinge on the right to marry and therefore violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

DM-385 (RQ-848). Request from the Honorable Steven C. Hilbig, Bexar County Criminal District Attorney, Bexar County Justice Center, 300 Dolorosa, Suite 5072, San Antonio, Texas 78205-3030, concerning whether a deputy constable may be classified as an "employee" pursuant to the Local Government Code, Chapter 158.

Summary of Opinion. A county civil service commission in a county with a basic civil service system created under the Local Government Code, Chapter 158, subchapter A may adopt a rule defining deputy constables as "employees" covered by the system. When the county civil service commission in a basic subchapter A civil service system adopts a rule defining deputy constables as "employees," the deputy constables become subject to the coverage of the civil service system.

DM-386 (RQ-839). Request from the Honorable Chris Harris, Chair Senate Committee on Administration, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Texas Education Agency may, under Texas Civil Statutes, Article 4413(29c), §9A, supply certificates of completion to a public school in the state whose driver education course does not meet the standards of and has not been approved by the Texas Education Agency or the Department of Public Safety and related questions.

Summary of Opinion. Any public school offering the program of organized instruction in driver education and traffic safety that the Texas Education Agency has adopted pursuant to the Education Code, §29.902(a) is offering an "approved driver education course" for purposes of Texas Civil Statutes, Article 4413(29c), §9A. The Texas Education Agency must, in accordance with Article 4413(29c), §9A, supply such a public school with "serially numbered driver education certificates to be used for certifying completion" of the course. Texas Civil Statutes, Article 4413(29c), requires a licensed driving safety school, upon which license the commissioner of education has imposed conditions pursuant to Article 4413(29c), §13(f), to pay an application fee under §13(b)(1)(G) unless the school desires to change the driving safety course it offers. Additionally, a licensed driving safety school, upon which license the commissioner has imposed conditions, need not apply for a new license.

TRD-9605752



Request for Opinions

ID# 38426. Request from the Honorable Kenny Marchant, Chair, Committee on Financial Institutions, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning responsibility of the Dallas County Treasurer with regard to the investment and reporting of various funds.

ID# 38539. Request from the Honorable Richard J. Miller, Bell County Attorney, P.O. Box 1127, Belton, Texas 76513, concerning prosecutorial responsibility of a county attorney in justice court.

ID# 38587. Request from the Honorable Kenny Marchant, Chair, Committee on Financial Institutions, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a municipal hospital authority created under Health and Safety Code, Chapter 262, may lease land to a private entity for construction and operation of a facility that is not a "hospital project".

ID# 38593. Request from William G. Burnett, Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, concerning whether the Texas Department of Transportation may lease the use of its right-of-way to a private entity

ID# 38603. Request from the Honorable Bill Weinacht, Reeves County Attorney, P.O. Box 825, Pecos, Texas 79772 concerning whether a county commissioner who makes an installment agreement with the tax assessor-collector for installment payment of delinquent taxes pursuant to the Tax Code, §33.02, thereby becomes

"interested in a contract with the county" in violation of the Local Government Code, §81.002.

ID# 38613. Request from Rebecca E. Forkner, Executive Director, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, concerning duties of the Psychological Associate Advisory Committee to the State Board of Examiners of Psychologists

ID# 38628. Request from Helen Campbell, Commissioner, Fire Fighter's' Pension Commissioner, 3910 South IH-35, Suite 235, Austin, Texas 78704, concerning authority of a volunteer fire department to withdraw from the Texas Local Fire Fighters Retirement Fund.

ID# 38631. Request from the Honorable John Vance, District Attorney of Dallas County, Frank Crowley Courts Building, 133 North Industrial Boulevard, LB 19, Dallas, Texas 75207-4399, concerning whether a county may computerize arrest warrants and supporting affidavits and thereby dispense with printing paper copies.

TRD-9605680



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 22. EXAMINING BOARD Part XIV. Texas Optometry Board Chapter 280. Therapeutic Optometry

• 22 TAC §280.5

The Texas Optometry Board proposes an amendment to §280.5, to correct two words, which were to have been made as a housekeeping change when the rule was finally adopted and published in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1093). As stated in that adoption preamble, the Texas State Board of Pharmacy commented that the correct name for the DEA was Drug Enforcement Administration (rather than "agency") and that the word "dispensed" within the rule should be more correctly stated "possessed and administered." Changes were made to the rule when adopted, but not all corrections were made. The purpose of this rule is to complete all housekeeping changes in two sections. The rule as adopted allowed the use of cocaine eye drops for diagnostic purposes by therapeutic optometrists. The rule clearly denotes that the cocaine eye drops may be possessed and administered but not prescribed.

Mrs. Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the section.

Lois Ewald also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is that the section will inform licensees regarding the possession and administration of cocaine eye drops for diagnostic purposes. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. Deadline for furnishing comments is May 30, 1996.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, §1.03 and §2.14.

The Texas Optometry Board interprets Texas Civil Statutes, Article 4552, §1.03, as authorizing therapeutic optometrists to utilize the cocaine eye drops for diagnostic purposes. The Texas Optometry Board interprets §2.14 as authorizing it to promulgate procedural and substantive rules for the regulation of optometry.

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry.

(a)-(i) (No change.)

(j) A therapeutic optometrist may possess and administer cocaine eye drops for diagnostic purposes. The cocaine eye drops must be no greater than 10 percent solution in prepackaged liquid form.

(1) A therapeutic optometrist must observe all requirements of the Texas Controlled Substances Act, the Health and Safety

Code, Chapter 481, and all requirements of the Texas Department of Public Safety (DPS) Drug Rules in making application and maintaining renewal of a United States Drug Enforcement Administration [Agency] (DEA) registration number for possession of the cocaine eye drops, a Schedule II controlled substance.

(2) (No change.)

(3) The therapeutic optometrist must use the required DEA form for the purchase of the cocaine eye drops and shall maintain a complete and accurate record of purchases (to include samples received from pharmaceutical manufacturer representatives) and **administration** [dispensing] of controlled substances. The maximum amount to be purchased and maintained in an office of practice shall be no more than two vials, one opened and one in inventory.

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

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

Issued in Austin, Texas, on April 19, 1996.

TRD-9605653 Lois Ewald
 Executive Director
 Texas Optometry Board

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 305-8500

◆ ◆ ◆ Part VII. Texas State Board of Examiners of Marriage and Family Therapists Chapter 801. Licensed Marriage and Family Therapists

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes amendments to §§801.2, 801.11, 801.17, 801.19, 801.42, 801.45, 801.48, 801.54, 801.73, 801.113, 801.114, 801.142, 801.144, 801.204, 801.264-801.266, 801.268, 801.292, 801.293, 801.296-801.298, 801.332, 801.351, 801.361, 801.362, 801.366, 801.368, 801.369; the repeal of §§801.143, 801.291, 801.364, and 801.365; and new §§801.94, 801.95, 801.143, 801.291, 801.299, 801.300, 801.364 and 801.365. The repealed sections delete obsolete information. The new sections and amendments establish rules for the regulation and licensure of licensed marriage and family therapists as required by Texas Civil Statutes, Article 4512c-1.

These sections are proposed to define what an individual must do to become licensed as a marriage and family therapist. The sections cover definitions and terms commonly used in the profession; set the standards for licensure as a marriage and family therapists; establish procedures for application, examination, licensure, continuing education, and complaint submittal; and provide procedures for denial, revocation or suspension of a license certificate. The new sections also cover the board; licensees and the board; consumer information; appli-

cation procedures; processing procedures; issuance of licenses; reciprocity; surrender of a license, continuing education requirements; examinations; complaints and violations; and formal hearings.

Bobby D. Schmidt, Executive Director, Texas State Board of Examiners of Marriage and Family Therapists has determined that for the first five-year period the sections will be in effect the fiscal implications for state government are anticipated to be negligible. The cost and process of administering the program will be generated by revenues from fees. There will be no fiscal implications for local government as a result of enforcing or administering the sections as proposed.

Mr. Schmidt also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated will be continued protection of the health, safety, and welfare of the citizens of Texas from the harmful effects if marriage and family therapy is practiced by incompetent persons. The proposed amendments to the sections will assure that fees are set in sufficient amounts to cover the cost of regulation and enforcement. There is no anticipated cost to small businesses. The anticipated cost to persons who are required to comply with these amendments as proposed are set out as follows: application fee increase \$10; licensure fee increase \$9; renewal fee increase \$10; late renewal fee, (on or before 90 days) increase \$10; late renewal fee, (90 days but less than one year) increase \$20; provisional license fee increase \$10; and a new child support reinstatement fee \$40. There will be no anticipated effect in local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, 1100 West 49th Street, Austin, Texas, 78756-31832, (512) 834-6657. Comments will be accepted for 30 days after publication of the sections in the *Texas Register*.

Subchapter A. Introduction

• 22 TAC §801.2

The amendment is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

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

Associate—A marriage and family therapy associate.

Family systems—An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its **socio-cultural** [sociocultural] and historic position in its larger environment.

[Group supervision—Supervision that involves a minimum of three and no more than six marriage and family therapy supervisors in a clinical setting during the supervision hour. A supervision hour is 60 minutes.]

[Individual supervision—Supervision of no more than two marriage and family therapy supervisors in a clinical setting during the supervision hour. A supervision hour is 60 minutes.] [Intern—See definition of marriage and family therapist intern.]

License—A marriage and family therapist license, a temporary marriage and family therapist **associate** license, or a provisional marriage and therapist license.

Marriage and family therapist associate—A person who holds a temporary license issued by the Texas State Board of Examiners of Marriage and Family Therapists to practice marriage and family therapy under the supervision of a board-approved supervisor.

Marriage and family therapist intern—A person who holds a temporary license issued by the Texas State Board of Examiners of Marriage and Family Therapists to practice marriage and family therapy under the supervision of a board-approved supervisor.]

Supervision—The guidance or management of an **associate** [individual or group] in the provision of direct [a] clinical services [setting].

Supervisor—A person [approved by the board as] meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise an **associate** [a licensed marriage and family therapist and/or marriage and family therapist intern].

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 April 22, 1996.

TRD-9605661 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

Subchapter B. The Board

• 22 TAC §§801.11, 801.17, 801.19

The amendments are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.11. The Board.

(a)-(i) (No change.)

(j) Training. A training program shall be available for the members of the board. At least one training course of this program must be completed before a member of the board may assume duties on the board. **The board shall use the training program of the Health Professions Council.**

§801.17. License Certificate.

(a) (No change.)

(b) Any license certificate issued by the board remains the property of the board and must be surrendered to the board **upon demand** [if the license is suspended or revoked or wrongfully issued].

§801.19. Fees.

(a) (No change.)

(b) The schedule of fees shall be as follows:

(1) application fee—**\$40** [\$30];

(2) (No change.)

- (3) licensure fee-**\$45** [\$36];
- (4) renewal fee-**\$40** [\$30];
- (5) late renewal fee-late renewal fees shall be set as follows:

(A) on or before 90 days-renewal fee plus one-half of the examination fee (**\$102.50**) [(\$92.50)]; **and**

(B) longer than 90 days but less than one year-renewal fee plus fee equal to the examination fee (**\$165**) [(\$185)]; and

- (6)-(7) (No change.)
- (8) temporary licensure fee-\$60; [and]
- (9) provisional licensure fee-**\$40** [\$30]; **and**
- (10) child support reinstatement fee-\$40.**

(c) (No change.)

(d) Remittances submitted to the board in payment of fees must be in the form of a cashier's check, [or] money order, **personal check, or company check.** [Personal and/or business checks will not be accepted.]

(e) (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 April 22, 1996.

TRD-9605662 Bobby D. Schmidt
 Executive Director
 Texas State Board of Examiners of Marriage and
 Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657



Subchapter C. Rendering Professional Therapeutic Services and Code of Ethics

• 22 TAC §§801.42, 801.45, 801.48, 801.54

The amendments are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.42. Rendering Professional Therapeutic Services. The following are professional therapeutic services which are part of marriage and family therapy when the services involve the professional application of family systems theories and techniques in the delivery of the services [rendering of professional therapeutic services may include but is not restricted to the following]:

- (1)-(8) (No change.)
- (9) group therapy [-] which utilizes systems methods and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods

and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span;

(10) chemical dependency counseling [-] which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;

(11) rehabilitation therapy [-] which utilizes systems methods and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(12) referral counseling [-] which utilizes systems methods and processes which include: evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family;

(13) diagnostic assessment [-] which utilizes the knowledge organized in the diagnostic and statistical manual of mental disorders (DSM) as well as the international classification of diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary;

(14) psychotherapy [-] which utilizes systems methods and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(15) hypnotherapy [-] which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(16) biofeedback [-] which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education;

(17) assessing and appraising [-] which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems; and

(18) consulting [-] which utilizes systems methods and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

§801.45. Sexual Misconduct.

- (a) (No change.)
- (b) A licensee shall not engage in sexual contact or sexual exploitation with a person who is:
 - (1) (No change.)

(2) **an associate** [a marriage and family therapist intern] supervised by the licensee, or a person who has been **an associate** [a marriage and family therapist intern] within the past two years; [or]

(3) a student at an educational institution at which the licensee provides professional or educational services, or a person who has been a student of the licensee within the past two years; or.]

(4) **a supervisor of the licensee or a person who has been a supervisor of the licensee within the past two years.**

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

(e) It is a defense to a disciplinary action under subsections (b)-(d) of this section, if [the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred, and] the licensee terminated mental health services with the person more than **five** [two] years before the date the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred.

(f) (No change.)

(g) Examples of sexual exploitation are:

(1)-(11) (No change.)

(12) encouraging a client, student, **associate** [intern], or former client to masturbate in the presence of the licensee; and

(13) masturbation by the licensee when a client, student, **associate** [intern], or former client is present.

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

§801.48. Confidentiality.

(a) Communication between a therapist and client and the client's records are confidential to the extent authorized by law.

(b) **A therapist shall retain and dispose of client records in such a way that confidentiality is maintained.**

§801.54. Research and Publications.

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

(d) A therapist must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the therapist's research **or** [and/or] publication.

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 April 22, 1996.

TRD-9605663 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

Subchapter D. Application Procedures

• 22 TAC §801.73

The amendment is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and

generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are **reasonably necessary** for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.73. Required Application Materials.

(a) (No change.)

(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and contain:

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

(4) the inclusive dates **of** [and direct, on-site, weekly] supervision provided to the applicant; **the total hours** of individual **supervision** [and group supervised experiences]; and the types of supervision used;

(5)-(8) (No change.)

(c) **Course work** [Graduate or doctoral transcripts]. An applicant must have the official transcript(s) showing all relevant **course work** [graduate or doctoral work] sent directly to the board office.

(d)-(e) (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 April 22, 1996.

TRD-9605664 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 22 TAC §801.94, §801.95

The new sections are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are **reasonably necessary** for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.94. *Finding of Non-Fitness for Licensure.* The substantiation of any of the following items related to an applicant may be, as the Texas State Board of Examiners of Marriage and Family Therapists (board) determines, the basis for the denial of a temporary license or a regular license of the applicant:

(1) lack of the necessary skills and abilities to provide adequate counseling services in independent practice;

(2) any misrepresentation in the application or other materials submitted to the board;

(3) the violation of any provision of the Licensed Marriage and Family Therapist Act or this chapter in effect at the time of application which is applicable to an unlicensed person; or

(4) the violation of any provision of code of ethics which would have applied if the applicant had been a licensee at the time of the violation.

§801.95. Finding of Non-Fitness for Licensure Subsequent to Issuance of Licensure. The Texas State Board of Examiners of Marriage and Family Therapists may take disciplinary action based upon information received after issuance of a license, if such information had been received prior to issuance of license and would have been the basis for denial of licensure under Subchapter E of this chapter (relating to Criteria for Determining Fitness of Applicants for Examination and Licensure).

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 April 22, 1996.

TRD-9605665 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

Subchapter F. Academic Requirements for Examination and Licensure

• 22 TAC §801.113, §801.114

The amendments are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.113. Academic Requirements.

(a) Persons applying for examinations and licensure must have [:]

[(1)] a master's or **doctorate** [doctoral] degree in marriage and family therapy or a **master's or doctorate degree** in a related mental health field with course work and training **determined by the board to be substantially** equivalent to a graduate degree in marriage and family therapy **from a regionally accredited institution of higher education or an institution of higher education approved by the board.** [; and]

[(2)] a planned graduate program in marriage and family therapy or its substantial equivalent of at least 45 semester hours which an applicant completed at an accredited school. The 45 semester hours may be course work taken in the required graduate program.]

(b) A [graduate] degree **or course work in a related mental health field** [under subsection (a)(1) of this section or the substantial equivalent of a planned graduate program in marriage and family therapy] must **have been** [be any planned graduate program of at least 45 semester hours which was] designed to train a person to provide direct services to assist individuals, families or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral or relational dysfunctions within the context of marriage or family systems.

§801.114. Academic Course Content. An applicant having a graduate degree in a mental health related field must have [substantial equivalent graduate] course work in each of the following areas (one course equals three semester hours):

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

(4) **professional** ethics [and professional studies]-one course;

(5) **applied professional** research-one course; and

(6) supervised clinical practicum-12 months/9 [nine] hours.

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 April 22, 1996.

TRD-9605666 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

Subchapter G. Experience Requirements for Examination and Licensure

• 22 TAC §§801.142-801.144

The amendments and new section are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.142. Experience Requirements.

(a) After receipt of a degree **and course work under Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure)** [meeting the requirements of subsection (a)(1) of this section], the applicant must have completed two years of work experience in marriage and family **therapy** [therapist] services that:

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

(b) (No change.)

(c) Experience shall be acceptable to the board if:

(1) it was begun [and completed] after the completion of **the** [a graduate] degree **and course work specified in §801.113 and §801.114 of this title (relating to Academic Requirements and Academic Course Content)** [in marriage and family therapy or its substantial equivalent degree];

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

§801.143. Supervisor Requirements.

(a) A supervisor must meet the following requirements before providing any supervision:

(1) hold a license (which is not a provisional or temporary license) issued by the Texas State Board of Examiners of Marriage and Family Therapists (board), hold a license as a marriage

and family therapist in another state or territory, or be eligible for licensure by the board;

(2) hold a graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from a regionally accredited institution as defined in §801.2 of this title (relating to Definitions);

(3) have one of the following:

(A) a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution (45 contact hours); or

(B) an equivalent course of study consisting of a 30-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision. The interactive component must include a minimum of four persons training to become supervisors of associates; and

(4) have at least 3,000 hours of client contact in the practice of marriage and family therapy over a minimum of three years.

(b) In lieu of meeting the qualifications set forth in subsection (a) of this section, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American Association of Marriage and Family Therapy (AAMFT) before the person provides any supervision.

(c) A supervisor may be approved by the board by submitting all required board forms as well as other documentation of credentials.

(d) If licensed by the board, the supervisor must complete three annual clock-hours of continuing education directly related to the supervision of associates.

§801.144. Other Conditions for Supervised Experience.

(a) **An associate** [A person who is in the process of completing the minimum 24 months, including 200 hours of supervised experience] may not practice within his or her own private independent practice of therapy as part of **the associate's direct clinical experience**; [such months or hours] however, the person may be employed in his or her supervisor's private practice of therapy as part of the internship.

(b) After January 1, 1995, **an associate in Texas** [a marriage and family therapist intern] must hold a temporary license. No hours will be counted toward the supervised experience except those accumulated during the time the **associate** [intern] is licensed.

(c) (No change.)

(d) A supervisor may not be related within the second degree by affinity (**marriage**) or within the third degree by consanguinity (**blood or adoption**) to an **associate** [intern].

(e) During the period of supervised experience, an **associate** [intern] may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that applicant provide documentation of all work experience.

(f) During internship, the full professional responsibility for the therapeutic activities of an **associate** [intern] shall rest with the **associate's** [intern's] official supervisor.

(g) All supervised experience submitted in fulfillment of the board's requirements must have been on a formal basis by contract or other specific arrangement prior to the period of supervision.

Supervisory arrangements must include all specific conditions agreed to by the supervisor and **associate** [intern].

(h) If an **associate** [intern] enters into contracts with both a supervisor and an organization with which the supervisor is employed or affiliated:

(1) (No change.)

(2) no payment for services shall be made directly by a client to the **associate** [intern];

(3) (No change.)

(4) liability shall remain with the organization **or** [and/or] the supervisor; and

(5) there shall be no financial arrangements between the organization and **associate** [intern] that have been made that extend beyond the period of supervision of the **associate** [marriage and family therapist intern] by the supervisor.

(i) Group supervised experience of an **associate** [applicant for examination] may count toward an **associate's** [applicant's] supervision requirement only if the supervision group consisted of **a minimum of three** and no more than six **associates during the supervision hour** [interns].

(j) Individual **supervised experience** [supervision] of an **associate may** [applicant shall] count toward the **associate's supervision** [applicant's experience] requirement only if the **supervision consisted of** [supervisor oversaw] no more than **two associates** [eight persons at any one time either in group or individual supervision for the inclusive dates of the applicant's supervised experience].

(k) **The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of face-to-face supervision every two weeks. A supervision hour is 60 minutes.** [An intern may have no more than two supervisors unless board approval is received for further supervisors. The intern's former supervisor or agency must submit a notarized statement explaining the reasons for the change of supervisor.]

(l) **An associate may only have one board-approved supervisor at a time. An associate may have no more than two board-approved supervisors during the period of supervised experience unless additional supervisors are approved by the board** [The documents and fee submitted will be considered part of the application for examination and licensure and will not need to be resubmitted].

(m) **If an associate's primary clinical employer has a contract to provide mental health services via telephonic or other electronic media, the associate may petition the board that up to 100 clock-hours of this service be applied toward the required 1,000 hours of direct clinical services. The petition must include a listing of potential therapeutic issues and a description of the proposed supervision.**

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 April 22, 1996.

TRD-9605668

Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

◆ ◆ ◆
• 22 TAC §801.143

(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 State Board of Examiners of Marriage and Family Therapists or

in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.143. Supervisor Requirements.

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 April 22, 1996.

TRD-9605667 Bobby D. Schmidt
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Earliest possible date of adoption: June 3, 1996

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Subchapter I. Issuance of License

• 22 TAC §801.204

The amendment is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.204. Temporary License.

(a) A temporary license shall be issued to **an applicant** [a marriage and family therapist intern] who has:

(1) obtained a master's or **doctorate** [doctoral] degree in marriage and family therapy or a related mental health field with course work and training equivalent to a graduate degree in marriage and family therapy as set out in §801.114 of this title (relating to Academic Course Content);

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

(4) submitted a supervisory contract to the board which specifies all contractual agreements with said supervisor **and that the supervisor has met the requirements of §801.143 of this title (relating to Supervisor Requirements)**; and

(5) (No change.)

(b) (No change.)

(c) Regular licensure will be issued to **an associate** [a marriage and family therapist intern] if **the associate**:

(1) [the marriage and family therapist intern] submits documentation of direct, clinical experience and supervision as required by Subchapter G of this chapter (relating to Experience Requirements for Examination and Licensure); and

(2) [the marriage and family therapy intern] passes the marriage and family therapy licensure examination as required by Subchapter H of this chapter (relating to Licensure Examinations).

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 April 22, 1996.

TRD-9605669 Bobby D. Schmidt
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Texas State Board of Examiners of Marriage and
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Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657



Subchapter K. Continuing Education Requirements

• 22 TAC §§801.264-801.266, 801.268

The amendments are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.264. Types of Acceptable Continuing Education. Continuing education undertaken by a [marriage and family] therapist shall be acceptable to the board as credit hours if it is offered by an **approved sponsor(s)** in [if the experience is given by an approved provider and falls into one or more of] the following categories:

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

(7) by teaching a graduate or undergraduate course in marriage and family therapy at a college or university (graduate work instruction may count for no more than **one-half** [50%] of annual continuing education).

§801.265. Continuing Education Sponsor [Providers]. The Texas State Board of Examiners of Marriage and Family Therapists (board) is not responsible for approving individual continuing education programs. The Texas State Board of Examiners of Marriage and Family Therapists (board) will approve an **institute, agency, office, organization, association, or individual** as a continuing education **sponsor** [providers] of continuing education units. The board will grant a **five-year** [three-year] certificate to organizations which shall permit the organizations to approve continuing education units for their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the individual's name to the board. Any university, professional organization, or **individual** [personal provider] who meets the **required** [above] criteria may advertise **as approved sponsors of** continuing education for licensed marriage and family therapists. [Sole providers must receive approval from the board or a board-approved sponsoring organization to provide continuing education units.]

(1) **Sponsors shall verify attendance of participants and provide participants with a letter or certificate of attendance.**



(2) Sponsors shall maintain all continuing education records and documentation for at least five years.

(3) Sponsors shall provide participants a mechanism for evaluation of each continuing education activity.

§801.266. Criteria for Approval of Continuing Education Activities.

Each continuing education experience submitted by a licensee or sponsor will be evaluated on the basis of the following criteria.

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

(4) Credit may be earned for clinical supervision of marriage and family therapy associates. Supervision may count for no more than one-half or ten hours of annual continuing education.

(5) A presenter of a continuing education activity or an author of a published work which enhances a marriage and family therapist's knowledge or skill may be granted five credit hours for each presentation or publication not to exceed one-half of the annual continuing education required.

§801.268. Submission [Submittal] of Continuing Education.

Continuing education units of no less than 20 hours must be reported annually by the licensee at the time of renewal. These hours will be reported on the form provided by the Texas State Board of Examiners of Marriage and Family Therapists (board). The board shall conduct an annual random audit requesting documentation of continuing education. Individual continuing education certificates of attendance shall not be submitted unless the licensee is requested to do so by the board.

(1) Continuing education credits from organizations which are not approved sponsors may be accepted if relevance to marriage and family therapy can be documented.

(2) Continuing education documentation shall be kept by the licensee for no less than five years.

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 April 22, 1996.

TRD-9605670 Bobby D. Schmidt
Executive Director
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Earliest possible date of adoption: June 3, 1996

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◆ ◆ ◆
Subchapter L. Complaints and Violations

◆ ◆ ◆
• 22 TAC §801.291

(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 State Board of Examiners of Marriage and Family Therapists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.291. Purpose.

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 April 22, 1996.

TRD-9605671 Bobby D. Schmidt
Executive Director
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Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

◆ ◆ ◆
• 22 TAC §§801.291-801.293, 801.296-801.300

The new sections and amendments are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.291. General. The purpose of this subchapter is to inform licensees of the valid reasons for the denial, revocation, probation, or suspension of a license, reprimand of a licensee, or imposition of an administrative penalty, and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following shall be grounds for revocation, probation or suspension of a license, imposition of an administrative penalty, or reprimand of a licensee if a person has:

(A) been convicted of a felony or a misdemeanor involving moral turpitude;

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization;

(I) otherwise violated the Act or board rules; or

(J) committed an act for which liability exists under the Civil Practice and Remedies Code, Chapter 81.

(2) If the Texas State Board of Examiners of Marriage and Family Therapists (board) suspends a license, the suspension shall remain in effect for the period of time stated in order or until the board determines that the reason for the suspension no longer exists.

(3) If a suspension overlaps a license renewal date, the suspended marriage and family therapist shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (2) of this subsection.

(4) Upon revocation, suspension or non-renewal of a license, a licensee shall return his or her license certificate and all existing renewal cards to the board.

§801.292. Criteria for Denial of Licensure. The substantiation of any of the following items related to an applicant may be, as the Texas State Board of Marriage and Family Therapists (board) determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate therapeutic services [in independent practice];

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

(7) a breach of confidentiality of a client except where allowed by law [or rules of the board];

(8)-(10) (No change.)

§801.293. Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee.

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) executive director **or executive director's designee** will give written notice to the person that the board intends to deny, suspend, **probate**, or revoke the license, **impose an administrative penalty**, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), [Texas Civil Statutes, Article 6252-13a,] and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).

(b) **Prior to denying, revoking, probating or suspending a license; imposing an administrative penalty; or reprimanding a licensee, the ethics committee shall give the applicant or licensee the opportunity for an informal disposition or a formal hearing or both an informal disposition and a formal hearing in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Dispositions), and Subchapter O of this chapter (Relating to Formal Hearings).** [If the board denies, suspends, or revokes a license, or reprimands a licensee, under this section, the executive director will give that person written notice:

[(1) of the reasons for the decision;

[(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the board and its decision in accordance with the APA; and

[(3) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable.]

§801.296. Complaint Procedures.

(a) (No change.)

(b) Upon receipt of a complaint, the executive director **or executive director's designee** may send to the complainant an official form which the complainant should complete and return to the Texas State Board of Examiners of Marriage and Family Therapists (board) office.

(c) Upon receipt of a complaint, the executive director **or executive director's designee** shall notify the alleged violator of the complaint **within 45 days** and request **that the alleged violator submit** a written response **regarding the complaint** within 10 [45] days **of receipt of the notice**.

(d) The executive director **or executive director's designee**, shall collect all information related to the complaint. The chair shall appoint **an ethics** [a] committee to review the complaint and the supporting documentation [to determine if there is sufficient evidence to request further investigation].

(e) The executive director **or executive director's designee** shall keep an information file about each complaint which will include the following information:

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

(f) The executive director **or executive director's designee** shall notify the parties to the complaint of the status of the complaint, on a quarterly basis, until the complaint is resolved.

(g) The **ethics committee, executive director, or executive director's designee** may request further investigation of the complaint. After investigation has been completed, the person completing the investigation shall submit his or her findings to the **ethics committee**, [and the] executive director, **or executive director's designee**. The written investigative report shall set out all facts obtained during the investigation.

(h) If the **ethics committee** determines that there are insufficient grounds to support or act upon the complaint, the **ethics committee** may dismiss the complaint and **the executive director or executive director's designee shall** give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(i) If the **ethics committee** determines that there are sufficient grounds to support the complaint, the **ethics committee** may recommend to the board that the license be denied, suspended, probated, or revoked, that the licensee be reprimanded, **that an administrative penalty be imposed**, or that other appropriate action as authorized by law be taken.

(j) **If the committee determines that a violation exists and that the violation is not a serious complaint affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.**

§801.297. Monitoring of Licensees.

(a) The executive director **or executive director's designee** shall maintain a complaint tracking system.

(b) (No change.)

(c) The executive director **or executive director's designee** shall review the reports and notify the **ethics** [complaints] committee if the requirements of the disciplinary action are not met.

(d) The ethics [complaints] committee may consider more severe disciplinary proceedings if non-compliance occurs.

§801.298. Default Orders.

(a) If a right to a hearing is waived [under Subchapter O of this chapter (relating to Formal Hearings)], the Texas State Board of

Examiners of Marriage and Family Therapists (board) shall consider an order taking disciplinary action as described in written notice to the licensee or applicant.

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

§801.299. Administrative Penalties.

(a) The assessment of an administrative penalty is governed by the Licensed Marriage and Family Therapist Act (Act), §25A.

(b) References in the Act to the "commissioner of health" or the "department" are references to the commissioner of health or his designee. The Texas State Board of Examiners of Marriage and Family Therapists (Board) shall request that the commissioner of health appoint the executive director of the board as his designee.

(c) References in the Act to a "hearing examiner designated by the department" are references to an administrative law judge from the State Office of Administrative Hearings.

(d) A hearing to assess administrative penalties shall be governed by Subchapter O of this chapter (relating to Formal Hearings) except where the subchapter is in conflict with the Act, §25A.

(e) The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I-violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II-violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III-violations that have no or minor health or safety significance.

(2) The range of administrative penalties by severity levels are as follows:

(A) Level I-\$1,000 to \$500;

(B) Level II-\$500 to \$250; or

(C) Level III-no more than \$250.

(3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next higher severity level.

(4) Adjustments to the range of an administrative penalty may be made for:

(A) prompt reporting;

(B) corrective action;

(C) compliance history; or

(D) multiple violations.

§801.300. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court or attorney's general's order suspending a license due to failure to pay child support, the executive director shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "licensed marriage and family therapist", "provisional licensed marriage and family therapist", or "temporary licensed marriage and family therapist" after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director or executive director's designee shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out in §801.19 of this title (relating to Fees) prior to issuance of the license under subsection (g) of 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 April 22, 1996.

TRD-9605672

Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657



Subchapter M. Licensing of Persons with Criminal Backgrounds

• 22 TAC §801.332

The amendment is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on

fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.332. Criminal Conviction. [The Texas State Board of Examiners of Marriage and Family Therapists (board) shall consider the felony or misdemeanor conviction of a therapist as grounds for the suspension or revocation of the therapist's license and shall review the conviction.]

(a)[(1)] The **Texas State Board of Examiners of Marriage and Family Therapists (board)** [board] may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a therapist or if the crime involves moral turpitude.

(b)[(2)] In considering whether a criminal conviction directly relates to the occupation of a therapist, the board shall consider:

(1)[(A)] the nature and seriousness of the crime;

(2)[(B)] the relationship of the crime to the purposes for requiring a licensee to be a therapist. The following felonies and misdemeanors relate to the license of a therapist because these criminal offenses indicate an inability or a tendency to be unable to perform as a therapist:

(A)[(i)] the misdemeanor of knowingly or intentionally acting as a therapist without a license;

(B)[(ii)] a misdemeanor and/or a felony offense under various chapters of the Texas Penal Code:

(i)[(I)] concerning Title 5, which relates to offenses against the person;

(ii)[(II)] concerning Title 7, which relates to offenses against property;

(iii)[(III)] concerning Title 9, which relates to offenses against public order and decency;

(iv)[(IV)] concerning Title 10, which relates to offenses against public health, safety, and morals; and

(v)[(V)] concerning Title 4, which relates to offenses of attempting or conspiring to commit any of the offenses in **clauses (i)-(v) [subclauses (I)-(IV)] of this paragraph** [clause]; and [.]

(3)[(iii)] **other** [The] misdemeanors and felonies [listed in subclauses (I)-(II) of this subparagraph are not inclusive in] that the board may consider [other particular crimes in special cases] in order to promote the intent of the Act and this chapter; [.]

(4)[(C)] the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(5)[(D)] the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a therapist. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c) (1)-(7).

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 April 22, 1996.

TRD-9605673 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

◆ ◆ ◆ Subchapter N. Informal Disposition

• 22 TAC §801.351

The amendment is proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.351. Informal Disposition.

(a) (No change.)

(b) If the executive director or the **ethics** [complaints] committee of the Texas State Board of Examiners of Marriage and Family Therapists (board) determines that the public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive director or the **ethics** [complaints] committee.

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

(e) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference. The notice shall inform the licensee or applicant of the nature of the alleged violation of the following:

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

(3) that **ethics** committee members may be present;

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

(f) (No change.)

(g) Members of the **ethics** [complaints] committee may be present at a settlement conference.

(h) (No change.)

(i) The licensee or applicant, the licensee's or applicant's attorney, the **ethics** committee members, the board's legal counsel, **and** the executive director, [and the board] may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The **ethics** committee members or executive director may call upon the attorney at any time for assistance in the settlement conference.

(k)-(l) (No change.)

(m) At the discretion of the executive director or the **ethics** committee members, a tape recording may be made of some or all of the settlement conference.

(n) The **ethics** committee members or the executive director shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or applicant, the licensee's or applicant's attorney, and board staff.

(o) (No change.)

(p) At the conclusion of the settlement conference, the **ethics** committee members or executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include **administrative penalties** or any disciplinary action authorized by the Licensed Marriage and Family Therapist Act (Act). The **ethics** committee member or **executive director** may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(q) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed settlement order shall be prepared by the **executive director, executive director's designee** [board office] or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(r)-(w) (No change.)

(x) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(1) If the executive director or **ethics** [complaints] committee determines that an informal conference shall not be held, the executive director or **executive director's designee** shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) (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 April 22, 1996.

TRD-9605674 Bobby D. Schmidt
Executive Director
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Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657



Subchapter O. Formal Hearings

- 22 TAC §§801.361, 801.362, 801.364-801.366, 801.368, 801.369

The amendments and new sections are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to

adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.361. Purpose. The purpose of this subchapter is to set forth the formal hearing procedures and practices that will be used by the Texas State Board of Examiners of Marriage and Family Therapists (board) in handling denials, **probations** [suspensions of probation], revocations, and suspensions of licenses; [and] reprimands of licensees; and **imposition of administrative penalties** [other contested cases] and in implementing the contested case provisions of the Administrative Procedure Act [(APA)].

§801.362. General.

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) or the **appropriate committee** on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provision of the Administrative Procedure Act (APA), applicable state statutes, and this chapter.

(b) A formal hearing or contested case proceeding unless otherwise determined by the **administrative law judge (ALJ) or upon agreement of the parties** [Texas State Board of Examiners of Marriage and Family Therapists (Board)] shall be held in Travis County, Texas.

(c) **The broad schedule of sanctions by the board for violations of the Licensed Marriage and Family Therapist Act (Act) or this chapter is as follows:**

- (1) **revocation of a license;**
- (2) **suspension of a license;**
- (3) **probation of a person whose license has been suspended;**
- (4) **imposition of an administrative penalty against a licensee;**
- (5) **reprimand of a licensee; and**
- (6) **denial of a license.**

(d) **The schedule in subsection (c) of this section does not preclude the use of settlement negotiations and agreed orders.**

§801.364. Parties to the Hearing.

(a) The parties to a hearing shall be the applicant or licensee and the ethics committee of the Texas State Board of Examiners of Marriage and Family Therapists.

(b) A party has the privilege to participate fully in any pre-hearing and formal hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by Administrative Procedure Act and other applicable laws.

(c) A party may appear personally or be represented by counsel.

§801.365. Subpoenas.

(a) On the written request of any party to the hearing, the executive director of the Texas State Board of Examiners of Marriage and Family Therapists shall issue a subpoena to require the attendance of witnesses or the production of documents. The administrative law judge may also issue any necessary subpoenas. A subpoena may be served by any person authorized to serve subpoenas under the Civil Practice and Remedies Code.

(b) All procedures relating to subpoenas shall be in accordance with the Administrative Procedure Act (APA).

(c) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Documents include books, papers, accounts, and similar materials or objects.

(e) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the APA.

§801.366. Depositions. The taking and use of depositions in any contested case proceeding shall be governed by the Administrative Procedure Act [, §14].

§801.368. Hearing Procedures.

(a) (No change.)

(b) Order of presentation.

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

[(6) When the parties have concluded their testimony will be repetitious, and the (ALJ) will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make his or her statement subject to cross-examination and clarifying questions by any party.]

(6) [(7)] **The** [After interested persons make statements or if there are no such statements, the] ALJ, at his or her discretion, may allow final arguments or take the case under advisement, and shall note the time and close the hearing. For sufficient cause, the ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

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

(e) Recording the hearing. The ALJ will keep either a stenographic or audio record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the Texas State Board of Examiners of Marriage and Family Therapists (board) shall bear the cost of the per diem or other appearance fee for such a reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the Administrative Procedure Act (APA) [, §13(g)]. In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The ALJ, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under the APA [, §14(a)], and the following rules.

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

(6) Official notice. Official notice by the **ALJ** [(Administrative Law Judge (ALJ)] of the board shall be in accordance with the APA [, §14(q)]. Official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The examiner shall indicate during the course of a hearing that information of which he or she will take official notice. When an examiner's findings are based upon official notice of a material fact not appearing in the evidence of record, the examiner shall set forth in his or her proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have

the opportunity to show to the contrary through the filing of exceptions to the ALJ's proposal for decision.

§801.369. Action After the Hearing.

(a) (No change.)

(b) Proposal for decision.

(1) **The** [If a proposal for decision is necessary under the Administrative Procedure Act (APA), §15, the] ALJ shall prepare the proposal and provide copies of the same to all parties.

(2)-(4) (No change.)

(c) (No change.)

(d) Final orders after the decision.

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

(3) All final orders shall be signed by the executive director and the **chair** [chairperson] of the board; however, interim orders may be issued by the ALJ in accordance with his or her order of appointment.

(4) (No change.)

(e) Motion for rehearing. A motion for rehearing shall be in accordance with the APA [, §16], or other pertinent statute and shall be addressed to the executive director of the board and filed with the ALJ.

(f) Appeals. All appeals from final Board orders or decisions shall be in accordance with the APA [, §19 and §20,] or other pertinent statute and communications regarding any appeal shall be to the Executive Director of 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 April 22, 1996.

TRD-9605676

Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 834-6657

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• **22 TAC §801.364, §801.365**

(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 State Board of Examiners of Marriage and Family Therapists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Civil Statutes, Article 4512c-1, §11(d) concerning rules on complaint information, §11A(a) concerning rules on complaint investigations and handling, §11(B) concerning rules on informal disposition, §12(a) concerning rules on fees, §13(d) concerning adoption of a code of ethics, §20(c) concerning rules on temporary licenses, §21(h) concerning rules on continuing education, and §25(e) concerning rules on a schedule of sanctions and generally under Article 4512c-1 which requires the Texas State Board of Examiners of Marriage and Family Therapists to adopt rules that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4512c-1.

§801.364. Parties to the Hearing.

§801.365. Subpoenas.

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 April 22, 1996.

TRD-9605675 Bobby D. Schmidt
Executive Director
Texas State Board of Examiners of Marriage and
Family Therapists

Earliest possible date of adoption: June 3, 1996

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty
Subchapter N. Residential Property Insurance
Market Assistance Program

• 28 TAC §5.10016

The Commissioner of Insurance proposes new §5.10016, concerning the adoption by reference of new forms to be used in the Residential Property Insurance Market Assistance Program (MAP) pursuant to the Insurance Code, Article 21.49-12. Article 21.49-12 was enacted by the Texas Legislature in 1995 (Acts 1995, 74th Legislature, page 3008, Chapter 415 §5, effective August 28, 1995) to require the commissioner to establish a voluntary market assistance program to assist consumers in obtaining residential property insurance coverage in underserved areas that are to be determined and designated by the commissioner under separate rule. The rule proposal on designation of underserved areas has not yet been published in the *Texas Register*. The purpose of the MAP is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including rural areas. The proposed Form TMAP-10, Letter of Non-eligibility for Residential Property Insurance, is necessary to implement proposed new 28 TAC §5.10006 (relating to Eligibility for Referral), which is proposed in a separate rule proposal published in the April 30, 1996, issue of the *Texas Register*. Under new 28 TAC §5.10006, it is proposed that a MAP applicant may submit a letter or letters of non-eligibility in lieu of the declination letter or letters required in Article 21.49-12 §2(b)(2). Article 21.49-12 §2(b)(2) requires (i) that each MAP application must be accompanied by a copy of a current nonrenewal or cancellation notice and a current declination letter from at least one other insurer writing the coverage sought and (ii) that applicants not having previous residential property insurance coverage must provide copies of current declination letters from at least two unaffiliated insurers writing the coverage sought. The proposed form is to be completed by a licensed local recording agent or by a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents; the agent or salaried representative must represent at least one licensed insurer who is actually writing residential property insurance in Texas. The form enables the agent or salaried representative to certify that, based on known underwriting guidelines, they are unable to place the applicant's risk with a licensed insurer available to that agent or salaried representative. Other information to be included on the form is the name of the proposed insured; address of the residential risk proposed to be insured; originating agent's name, address, and Texas Department of Insurance license number; and the name or names of the insurers with whom the agent or salaried representative is unable to place the risk. The proposed Forms TMAP-11(HO), TMAP-12(TDP), TMAP-13(FRO), and TMAP-14(TFR), which are forms to be used in applying for coverage through the MAP, are necessary to implement Article 21.49-12 §2(b) and proposed new 28 TAC §5.10003 (relating to Definitions). Article 21.49-12 §2(b) requires the use of application forms to apply for coverage through the MAP. Proposed new 28 TAC §5.10003 (relating to Definitions), which is proposed in a separate rule proposal published in the April 30, 1996, issue of the *Texas Register*, requires that the MAP application form be promulgated by the Texas Department of Insurance. The forms are to be used in applying for homeowners, dwelling, farm and ranch owners, and farm and ranch coverage. The forms are similar to standard application forms currently used by insurers writing residential property insurance in Texas. The forms are part of the complete application packet to be submitted to the department's MAP division for referral to participating insurers for possible issuance of quotes to applicants,

pursuant to proposed new 28 TAC §5.10009(a) (relating to Operations of the MAP) which is published in the April 30, 1996, issue of the *Texas Register*. The proposed application forms require the following to be provided: (i) licensing and address information for the originating agent, including name, Texas Department of Insurance ID number, and Social Security number/TIN; (ii) applicant and co-applicant information, including name, occupation, employer, and Social Security number (iii) information on property to be insured, including location of property, key rate used, and distance to nearest fire hydrant; (iv) mortgagee information; (v) type of coverage desired and selection of optional endorsements; (vi) general risk-related information; (vii) MAP eligibility information; (viii) underwriting information, including year built, market value, structure type, types of renovation if any, and types of protection devices; (ix) on the Form TMAP-13(FRO), information regarding the farming activities conducted on the premises; and (x) replacement cost information. Applicants whose risks are located in areas that are designated by separate rule as underserved pursuant to both Articles 21.49-12 and 5.35-3 (Property Protection Program for Underserved Areas) of the Insurance Code will be able to select additional optional endorsements that were adopted by the commissioner pursuant to Commissioner's Order Number 95-1285 (December 8, 1995). These endorsements will be available on the later of the effective date of the applicable residential property insurance benchmark rates determined pursuant to the December 20, 1995 rate hearing or the effective date of the rule designating the underserved areas to be served by the MAP pursuant to Article 21.49-12. Each of the proposed application forms also contain the applicant's authorization to the Texas Department of Insurance to enable the forwarding, on the applicant's behalf, of the completed application form and two 35mm photographs of the property proposed to be insured; and if applicable, declination letter(s) or letter(s) of non-eligibility; cancellation or non-renewal notice; and voluntary inspection property condition evaluation report and certificate of insurability to prospective insurers participating in the MAP for the sole purpose of obtaining residential property insurance for the applicant. This authorization is necessary because of the confidentiality requirements in Article 21.49-12 §5, which provide that the department shall maintain as confidential all application files and related documents received under Article 21.49-12, except to certain specified persons and entities, including the originating and issuing agents, the applicant for their own file, or an insurer who agrees to insure the applicant. This authorization is promulgated pursuant to the commissioner's rulemaking authority in Article 21.49-12 §8 to promulgate rules in addition to the plan of operation that are appropriate to accomplish the purposes of Article 21.49-12. The forms are proposed to be effective on July 1, 1996. Copies of the proposed forms are available from the Office of the Chief Clerk, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Sylvia Gutierrez at (512) 463-6327.

Lyndon Anderson, associate commissioner, property and casualty division, has determined that for each year of the first five years the proposed section is in effect, any fiscal implications to state government are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and are not as result of the adoption, enforcement, or administration of the proposed section. Mr. Anderson has also determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications to units of local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

Mr. Anderson also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the proposed section is the availability of forms necessary to implement the Residential Property Insurance Market Assistance Program which is operated pursuant to Article 21.49-12 of the Insurance Code. The proposed letter of non-eligibility form is necessary to enable applicants who are unable to obtain declination letters from insurers, which are required of applicants to the MAP pursuant to Article 21.49-12 §2(b)(2), to have an alternative means to submit such declination letters. The proposed form will enable such letters to be completed by a licensed local recording agent or by a salaried representative for insurers whose plan of operation does not contemplate the use of local recording agents; the agent or salaried representative must represent at least one licensed insurer who is actually writing residential property insurance in Texas and must certify that, based on known underwriting guidelines, the agent or salaried representative is unable to place the applicant's property with a li-

censed insurer available to that insurer. The proposed application forms (Forms TMAP-11(HO), TMAP-12(TDP), TMAP-13(FRO), and TMAP-14(TFR) will provide necessary information to the department's MAP division to determine if the risk is eligible for referral to a participating insurer and to participating insurers to determine whether to issue a quote to the applicant on the proposed residential property insurance. With respect to proposed Form TMAP-10, the letter of non-eligibility, the cost to licensed local recording agents or salaried representatives for insurers whose plan of operation does not contemplate the use of local recording agents to comply with the proposed section for each year of the first five years the proposed section will be in effect will be the cost of printing the one-page form and completing the form; these costs will vary from agent to agent based on the individual agent's hourly business costs, how many policies the agent delivers through the MAP, and the computerization of the agency. Any other possible economic costs to licensed local recording agents or salaried representatives for insurers whose plan of operation does not contemplate the use of local recording agents to comply with the proposed section for each year of the first five years the proposed section will be in effect are the result of the legislative enactment of Article 21.49-12 of the Insurance Code and not as a result of the adoption, enforcement, or administration of the proposed section. There will be no effect on small business as a result of enforcing or administering the proposed section.

Comments on the proposal must be submitted within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC #113-2A, Austin, Texas, 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, P.O. Box 149104, MC #103-1A, Austin, Texas 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed pursuant to the Insurance Code, Articles 21.49-12 and 1.03A; and the Government Code §§2001.004-2001.038. Article 21.49-12 §2(b)(2) requires that each MAP application must be accompanied by a copy of a current nonrenewal or cancellation notice and a current declination letter from at least one other insurer writing the coverage sought and that applicants not having previous residential property insurance coverage must provide copies of current declination letters from at least two unaffiliated insurers writing the coverage sought. Article 21.49-12 §1(a) provides that residential property insurance shall be provided through the MAP under a homeowners policy, a residential fire and allied lines policy, and a farm and ranch policy. Article 21.49-12 §2(b) requires the use of application forms to apply for coverage through the MAP. Article 21.49-12 §8 authorizes the commissioner to adopt rules in addition to the plan of operation that are appropriate to accomplish the purposes of Article 21.49-12. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

The following statute is affected by this proposal: Insurance Code, Article 21.49-12.

§5.10016. Forms. Promulgated for Use in the Residential Property Insurance Market Assistance Program The Commissioner of Insurance adopts by reference the forms specified in this section for use in the Residential Property Insurance Market Assistance Program which is operated pursuant to Article 21.49-12 of the Insurance Code. Specimen copies of these forms are available from the MAP Division, MC #104-MA, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. These forms are:

- (1) Form TMAP-10—letter of non-eligibility. Effective July 1, 1996.
- (2) Form TMAP-11(HO)—homeowners insurance application. Effective July 1, 1996.

(3) Form TMAP-12(TDP)—dwelling insurance application. Effective July 1, 1996.

(4) Form TMAP-13(FRO)—farm and ranch owners insurance application. Effective July 1, 1996.

(5) Form TMAP-14(TFR)—farm and ranch insurance application. Effective July 1, 1996.

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 April 24, 1996

TRD-9605658 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: June 3, 1996

For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY
Part I. Texas Natural Resource
Conservation Commission
Chapter 216. Water Quality Performance
Standards for Urban Development
Subchapter A. Water Quality Protection Zones
• 30 TAC §§216.1-261.11

The Texas Natural Resource Conservation Commission (commission) proposes new §§216.1-216.11, Subchapter A, Chapter 216, concerning water quality protection zones.

The purpose of the proposed new subchapter is to implement Senate Bill 1017, enacted by the 74th Legislature, which added §26.179 to the Texas Water Code. These rules will set out the procedures and criteria to be used by the commission in the: review and approval of water quality plans and amendments submitted for tracts of land designated as water quality protection zones; approval of requests to designate water quality protection zones for tracts of land that are less than 1,000 acres but not less than 500 acres in size; determination of the adequacy of annual reports to be submitted for water quality protection zones; and the assessment of fees.

Proposed new §216.1, Applicability, provides that the subchapter applies only to areas within the extraterritorial jurisdiction of cities with populations greater than 5,000 which have enacted or attempted to enforce at least three ordinances or amendments to regulate water quality or control or abate water pollution within their extraterritorial jurisdictions in the five years prior to June 16, 1995, in accordance with §26.179 of the Texas Water Code. The subchapter does not apply to an area within the extraterritorial jurisdiction of a municipality with a population greater than 900,000 that has enacted an ordinance that applies to the extraterritorial jurisdiction area whose purpose is to prevent the pollution of an aquifer which is the principal drinking water source for the municipality.

Proposed new §216.2, Definitions, contains the definitions of key words and phrases found throughout the subchapter.

Proposed new §216.3, Requests for Approval to Designate Water Quality Protection Zones, contains the procedures that the executive director will use to review and approve requests to designate tracts of land that are less than 1,000 acres, but not less than 500 acres in size, as water quality protection zones. Applications will include information about the applicant, maps indicating the location and layout of proposed zone, a description of proposed land uses and water quality facilities, studies proposed to support the establishment of background levels of water quality, a water quality plan for the proposed zone, analysis of adjacent and regional water quality protection plans, and payment of application fees. This section also describes procedures for the submittal of requests and review by commission staff, as well as the basis for approval, which includes an evaluation of whether the plan will reasonably attain water quality protection as defined in §26.179 of the Texas Water Code and the degree to which the proposed plan is

found to be compatible with adjacent and regional water quality plans. The determination of whether plans are compatible includes, but is not limited to, whether the cumulative impacts of such plans do not degrade the existing water quality of affected water in the state. Approval for designating a water quality protection zone for tracts smaller than 1,000 acres occurs with approval of the water quality plan submitted as part of the approval request.

Proposed new §216.4, Content and Effective Date of Designations, specifies the information required to designate a water quality protection zone of at least 500 acres in size and the time at which the designation becomes effective. Information required for designating a water quality protection zone includes a survey description of the zone, a general description of the land uses and water quality facilities proposed for the zone, a water quality plan for the zone, signatures of all owners of land within the zone, and notices of filings with appropriate city and county clerks. Conditions under which a plan shall expire are upon denial, failure to commence construction within five years of plan approval, or upon annexation of the zone by a municipality.

Proposed new §216.5, Responsible Parties, sets out the capabilities and obligations of parties responsible for water quality protection zones, including implementing the water quality plan, filing the annual report, taking corrective actions, and paying the fees for the zone. To ensure that water quality protection zones achieve long-term water quality protection, the agency proposes to approve the transfer of these responsibilities to other persons or entities based upon an assessment of the new party's capability to provide for the extended operation and maintenance of the water quality protection measures in the plan. The executive director may require either old or new responsible parties to retire any outstanding liabilities of the zone as a condition of approval of the transfer of responsible party responsibilities.

Proposed new §216.6, Water Quality Plan, reflects statutory direction that water quality protection is to be achieved by either maintaining background levels of water quality or retaining the first 1.5 inches of rainfall from developed areas. This protection shall seek to protect and maintain applicable water quality standards for affected surface and ground water and to prevent their degradation. Retention and on-site disposition of the runoff that results from 1.5 inches of rainfall on developed areas within the water quality protection zone presumptively satisfies the second option.

Proposed new §216.6(b), Contents, requires proposed water quality plans to include information pertaining to water quality monitoring, the capture and retention of storm water runoff, and best management practices. Water quality plans relying on the maintenance of background levels of water quality in runoff must contain procedures for two general types of water quality monitoring, determination of background levels of water quality in runoff, and performance monitoring.

Background levels of water quality are defined in §216.6(b)(1) in terms of the average annual mass loadings of total suspended solids, total nitrogen, total phosphorous, biochemical oxygen demand and chemical oxygen demand that exist in the water quality protection zone prior to the new development proposed for the zone. Background levels of water quality in runoff shall be defined in terms of average annual constituent mass loadings rather than average annual constituent concentrations because the former is the standard by which the water quality of receiving waters is evaluated by state and federal water quality management programs. Quantifying the loadings of constituents to receiving waters allows for the evaluation of constituent mass balances, transformation reactions, and the resultant instream water quality conditions. These concepts are the bases for the waste load evaluation procedures used by the commission for managing point source discharges since the mid-1970s and are also specified in 40 CFR Part 131 in the Total Maximum Daily Load procedures for nonpoint source discharges.

Procedures used to determine background levels of water quality in runoff are required to reflect existing site conditions, to employ acceptable field and laboratory methods, and to be sufficiently frequent so as to accurately measure water quality. Monitoring sites are to be located so as to be representative of all existing areas in the water quality protection zone. Developed areas used to establish background levels of water quality must have been subject to management measures implemented to the maximum extent practicable and, therefore, be representative of water quality conditions that are attainable in developed areas. This provision is included to ensure that the background

water quality standards established for developed areas reflect the use of reasonable and feasible water quality protection efforts. Supporting information is to be provided justifying the selection of background water quality monitoring locations, as well as information pertaining to field sampling procedures and equipment, laboratory analytical methods and results, and data quality assurance.

Under proposed §216.6(b)(1)(A), water quality monitoring is to consist of a minimum of one stage (flow) composite sample for at least four storm events. A stage (flow) composite sample is composed of multiple water quality sample aliquots that are combined into a single sample in proportions that correspond to the volume of flow represented by the sample aliquots. This procedure allows for the determination of flow weighted average constituent concentrations for storm events. The type of rainfall event to be monitored is specified to consist of one-half inch or more of rainfall that occurs at least one month from the previous one-half inch or greater rainfall event and that is preceded by at least a 72-hour period without measurable precipitation. These specifications provide standardization and thus comparability in the sampling program, and ensure that there is sufficient time for the accumulation of potential pollutants so that the sampled events are targeted to yield the maximum information. The agency requires that the sampling program yield an accurate measure of water quality conditions as determined by a valid technical analysis or program precedent.

Data from the water quality protection zone establishing background levels of water quality for runoff may not be available in all cases. In such circumstances, §216.6(b)(1)(A)(iv) of the proposed rule allows for the submittal of a water quality monitoring plan to collect the data and the use of calculated values for background levels of water quality during the interim period. The water quality monitoring plan to collect data from the zone to establish background levels of water quality must specify the procedures previously described. This provision is to ensure that the data establishing background levels of water quality are collected in a consistent manner, irrespective of when they are collected.

Calculations used to establish background levels of water quality are required by §216.6(b)(1)(B) of the proposed rule to be based upon concepts and data from the National Urban Runoff Program (NURP) study or other such studies which have received prior approval of the executive director. The executive director will consider all relevant and appropriate information submitted to support the establishment of background levels of water quality, provided it has been reviewed and approved by the executive director prior to and separate from the submission and review of the associated water quality plan. The executive director's review of studies proposed to be used to establish background levels of water quality will therefore not delay review of the proposed plan within the 120-day statutory period.

Under proposed §216.6(b)(2), water quality performance monitoring is to be conducted for three years after development in the water quality protection zone is completed to demonstrate the water quality protection plan is achieving water quality protection by maintaining background levels of water quality in runoff. Development shall be considered to be completed when 90% of the planned development is in place. The rule requires performance monitoring at representative sampling locations, names the constituents to be monitored, and sets minimum requirements for a monitoring plan, sampling frequency, sampling duration and the basis for determining compliance. Water quality performance monitoring is to be conducted at four or more locations that are representative of where runoff from the water quality protection zone enters waters in the state. Technical factors used to determine the number and location of monitoring sites are to be reported to the executive director. Waterways or waters in the state is defined in the definitions section.

In proposed §216.6(b)(2)(E), the rule includes a procedure for the executive director to determine that performance monitoring may be discontinued before the expiration of the three-year period. Performance monitoring requirements will be based on the executive director's assessments of the accuracy, completeness and content of the available data.

Under §216.6(b)(2)(F), the results of water quality performance monitoring are to be reported to the executive director on an annual basis. Data generated by the performance monitoring program will be used to calculate average annual constituent loadings from the water quality protection zone after development is complete. These values will then

be compared to the equivalent values previously established to represent background levels of water quality in runoff to determine compliance with the statutory requirement that background water quality be maintained at a level comparable to those levels that existed prior to new development. The proposed rule gives quantification to this requirement by stating, for any given year, water quality protection zones will be deemed to be out of compliance and require corrective action if performance monitoring demonstrates that average annual constituent loadings after development are greater than background levels established for the zone. It shall be a rebuttable presumption that this standard of equivalence is met if loadings from the zone, after development are equal to or less than 10 percent above the background levels of water quality.

This presumption is based upon two principles: 1) providing performance equity between the two methods provided by the statute to achieve water quality protection; and 2) consistency with other stormwater quality management programs that are based upon achievable technology standards. The two water quality protection strategies enumerated in the statute (maintain background levels of water quality and capture/retain 1.5 inches rainfall) should result in an equal level of water quality protection. The capture/retention strategy is based upon the City of Austin's, 1990 report "First Flush of Runoff" conclusions that 90% of the annual loading is contained in the first 1.5 inches of runoff even for the most intensely developed properties. Therefore the "maintain background level of water quality strategy" should have a similar target level of protection, that is, post-development loadings are no more than 10% greater than the pre-development loadings. The second principle, consistency with other management programs is based upon performance standards in the following programs: Lower Colorado River Authority's Highland Lakes Nonpoint Source Pollution Ordinance specifies 90% removal goal for total suspended solids; the state of Florida Stormwater Program requires best management practices to achieve a 90 percent pollutant removal goal in outstanding state waters; and EPA/NOAA, BMP Guidance for the Coastal Zone, 1993, indicates that the upper end of the probable range of pollutant removal efficiency was 90 percent or greater for all 5 constituents of interest to this rule (BOD, COD, TSS, TN and TP) for the following BMPs: infiltration basin/trench, porous pavement, concrete grid pavement, wet pond, and extended detention wet pond.

Proposed §216.6(b)(3) addresses capturing and retaining the runoff from the first 1.5 inches of rainfall from developed areas in the water quality protection zone, the second means by which water quality protection can be achieved. Implementation of this strategy does not require water quality monitoring to verify that background levels of water quality in runoff are maintained. Under the proposed rule, however, the implementation of this strategy will require that supporting design information, maintenance procedures, record-keeping provisions and information on associated best management practices be included in the water quality plan and subsequent annual reports. Technical analyses are to be submitted with the plan, demonstrating that the proposed management measures will capture and retain the requisite volume of rainfall. Proposed plans will also provide for procedures to maintain the management facilities and for sufficient record keeping to verify the adequate performance of the management facilities. The plan is to describe best management practices proposed to be used to protect against possible secondary water quality impacts resulting from the capture, retention and disposition of storm water runoff.

Best management practices are addressed in proposed §216.6(b)(4). A description of those practices being used are statutorily required to be included in annual reports submitted to the executive director. Under the proposed rule, a description of best management practices to be used in the zone shall also be included in the water quality plan to provide a basis for the executive director to evaluate the annual reports. Only those practices presented in the approved water quality plan are authorized to be used in the water quality protection zone. Alternative practices may be used only if the water quality plan is amended under the amendment procedures in the rule.

Available information on best management practices may be of a general nature during the planning phases of a water quality protection zone. In these instances, the criteria proposed to be used to specify the construction, operation and maintenance of the practices may be provided in lieu of more specific information. The proposed rule requires that best management practices be used during and after

development to prevent and control the off-site transport of sediments due to construction, post-construction, and related activities. Under §216.6(b)(4)(ii), the water quality plan shall include provisions for keeping records sufficient to verify the use, operation and maintenance of best management practices, and these records shall be made available to the executive director on request.

Proposed new §216.6(c), Submittal, Review, Approval and Amendment Procedures, provides the procedures and criteria the executive director will use to review and approve original and amended water quality plans submitted for designated water quality protection zones. The statute requires that the water quality plan be signed and sealed by a registered professional engineer acknowledging that the plan is designed to achieve water quality protection as defined in the statute. Water quality plans which are submitted to the executive director for approval must be recorded in appropriate county deed records. The statute specifies that the executive director's review is to determine whether the proposed plan is reasonably expected to attain water quality protection as defined in the statute.

Section 26.179 of the Water Code also provides for the amendment of water quality plans submitted by the responsible parties for a water quality protection zone. Section 216.6(c)(2) of the proposed rule clarifies that the executive director may require water quality plans to be amended to meet the requirements of existing or new mandatory federal water quality requirements.

Water quality plans and amendments are to be reviewed by the agency staff responsible for reviewing pollution abatement plans in the county in which the water quality protection zone is located. By statute, the commission must complete its review and take action on a water quality plan within 120 days of filing with the commission. The 120-day period shall not commence until a plan that meets all requirements has been submitted to the executive director. Notices of administrative and technical completeness of the proposed plan shall be provided by agency staff in accordance with applicable provisions contained in Chapter 281 of this title (relating to Applications Processing). Failure to submit a plan meeting all requirements will result in the disapproval of the plan without reimbursement of related fees. Deed recordation of all changes to the plan will be required. The proposed rule specifies the procedures for submitting water quality plans to the executive director and creates a procedure for notice of approval or disapproval of plans.

Proposed new §216.6(d), Effective Date and Term, specifies the periods during which the water quality plan is in effect. Except for tracts of land containing less than 1,000 acres, §26.179 provides that a water quality plan becomes effective upon recordation in the deed records of the appropriate county, remains in effect during the executive director's review of the plan and during the appeal of a denial of the plan, and is a covenant running with the land. By contrast, tracts that contain less than 1,000 acres become effective after executive director approval of the plan and deed recordation. The proposed rule provides that the plan terminates either upon final order of disapproval by the executive director or five years after the plan takes effect in the event that the development has not commenced.

Proposed new §216.6(e), Effect of the Plan, specifies that the implementation of an approved water quality plan shall satisfy all other state and local requirements for the protection of water quality, provided development in the zone complies with all applicable state laws and commission rules regulating water quality, including this subchapter, which are in effect on the date the zone is designated.

Proposed new §216.7, Actions and Notice, specifies the procedures the executive director will use to provide public notice and opportunity for comment on proposed actions taken under this subchapter. Any person may provide comments to the executive director on applications submitted under this subchapter, and the executive director may use this information in the consideration of action on the application.

Proposed new §216.8, Annual Reporting Requirements, concerns the content, procedures and purpose of the annual reporting requirements under this subchapter. The annual technical report is to include the results of water quality monitoring performed in the water quality protection zone and a description of best management practices used throughout the zone. The submittal date will be April 1 of each year. If information in the annual report indicates that water quality protection was not achieved in the preceding year, responsive corrective actions shall be described.

If the water quality plan is dependent upon the retention and disposal on-site of the first 1.5 inches of rainfall from developed areas, supporting design information, maintenance procedures, recordkeeping provisions, and information on associated best management practices will be required, and annual operational reports of this data will be submitted to the executive director by April 1 of each year. If information in the operational report indicates that water quality protection was not achieved in the preceding year, responsive corrective actions shall be described.

Proposed new §216.9, Corrective Actions, implements the statutory requirement that background water quality be maintained at levels comparable to those levels that existed prior to new development. As discussed earlier, water quality protection plans may be presumed to have maintained comparable pre-development background levels of water quality if constituent mass loadings are not greater than 10% above background levels. Such presumption is rebuttable. If performance monitoring and BMPs indicate that background levels were not maintained during the previous year, the plan must be modified to improve operational and maintenance practices in both existing and future phases of development to the extent reasonable feasible and practical. Failure to adequately consider the limitations of water quality plans in existing phases of development may be the basis for denial of approval for water quality plans in proposed future phases of development.

Proposed new §216.10, Enforcement, provides remedies against persons or entities that do not comply with this subchapter or an approved water quality protection plan.

Under proposed new §216.11, Fee Schedule, the commission proposes to assess both an application fee and an annual fee that will allow the agency to recover the costs of staff resources involved in administration of the program. Both fees are based upon the amount of developed area in the water quality protection zone, again reflecting the work required by the agency to fulfill its responsibilities under the subchapter. The commission proposes to assess an application fee in the amount of \$25 per acre of development proposed in the water quality protection zone. These funds will support agency staff responsible for reviewing the applications and the commission's responsibilities to ensure that the provisions of the water quality plan are properly implemented. Application fees will be assessed for all new applications for approval to designate a water quality protection zone, applications for approval of water quality plans for a previously designated water quality protection zone, and applications for approval of amendments to previously approved water quality plans.

The commission proposes to assess an annual fee of \$10 per acre of development existing in the water quality zone during the preceding year. These funds will support agency staff responsible for reviewing the annual reports and the agency's responsibilities to ensure that the provisions of the water quality plan are properly implemented. The basis for calculating the application fees and annual fees shall be documented by the responsible parties and furnished to the executive director with each fee payment. Payment of application fees shall accompany the filing of new applications and payment of annual fees shall accompany the filing of the annual reports.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for each year of the first five years the sections as proposed are in effect, there will be fiscal implications as a result of administration and enforcement of the sections. The effect on state government will be an increase in costs associated with the review of applications for water quality protection zones, water quality plans and reports, and annual monitoring and assessment of the results of required water quality protective measures. The actual costs of implementation and administration of these sections will depend on the number of applications received and the number of water quality protection zones established. These costs will generally be limited by the revenues generated through fee assessments. It is estimated the costs of implementation of these sections related to a typical water quality protection zone of 2,000 developed acres would be approximately \$50,000 in the first year (application review and capital costs) and \$20,000 in subsequent years (annual monitoring, inspection, and evaluation costs). The total five-year cost is estimated to be approximately \$130,000. The actual number of applicants and designated water quality protection zones cannot be determined at this time and, therefore, the actual costs to the state may vary.

There are no direct fiscal implications anticipated for units of local government. There are, however, indirect effects anticipated for local governments as a result of the shift in responsibility for regulation of water quality from local government to the state and the statutory preemption of ordinance authority applicable to designated water quality protection zones. Some costs savings to units of local government may occur as a result of the transfer of authority; however, these cost effects cannot be estimated at this time and are not anticipated to vary as a direct result of any provision of the proposed rules.

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 the enforcement of and compliance with the sections will be the prevention of further degradation of the quality of water resources in newly developed urban and suburban areas, reductions in the risk to human health and safety from degradation of water quality, the preservation of aquatic and related biological resources, and the maintenance of public and private recreational resources.

There are economic costs anticipated for persons required to comply with the sections as proposed. The designation of a water quality protection zone is elective and not required of any property owner under these rules. Section 26.179 of the Texas Water Code and the proposed rules establish an opportunity for eligible property owners to create water quality protection zones subject to the commission's regulations for water quality protection. Eligible properties are those of 500 or more acres within the municipal extra-territorial jurisdictions defined by §26.179. While these eligible properties are narrowly defined by statute and limited in number, no estimate of the number of such properties, or the number of property owners that would seek designations of water quality protection zones has been made.

Affected property owners under these rules will realize costs associated with compliance with proposed requirements. These costs will be related to the development of an application, planning and engineering costs, the costs of required water quality control measures (capital, operation and maintenance), reporting and record keeping costs, and fees. The costs to any affected person will vary on a case-by-case basis due to the site-specific conditions of each affected property and with the specific water quality protective measures elected. Although these costs cannot be determined for any individual property or for affected properties as a whole at this time, representative costs for a typical property may be estimated. It is estimated that capital costs for a developed area of 2,000 acres could be approximately \$500,000 with annual operating costs of an additional \$10,000. These costs may vary significantly for any actual project based on the size and location of the property, site-specific conditions and the percentage of the site developed. Costs per acre may be assumed to increase for smaller parcels of land while economies of scale may mitigate costs per acre for larger sites. It is also assumed that these potential costs of water quality protection under the proposed rules represent reductions in the probable cost of water quality control compliance under the local municipal requirements superseded by §26.179 of the Texas Water Code and these rules. Although these cost reductions may be significant, no estimate of the potential differences in cost has been made in this analysis.

In addition to capital and maintenance costs, fees will result in an initial cost of \$25 per acre of development and an annual cost of \$10 per acre of development. The cost in fee assessments for the initial five-year period for a site with 2,000 developed acres would be \$130,000 or an average of \$26,000 per year.

The commission has prepared a Takings Impact Assessment for these rules pursuant to §2007.043 of the Texas Government Code. The following is a summary of that Assessment. The specific purpose of the rule is to implement Senate Bill 1017, enacted by the 74th Legislature, which added §26.179 to the Texas Water Code. The rules will substantially advance this purpose by setting out the procedures and criteria to be used by the commission in the review and approval of water quality plans and amendments submitted for tracts of land designated as water quality protection zones; authorizing the approval of requests to designate water quality protection zones for tracts of land that are less than 1,000 acres but not less than 500 acres in size; and describing the determination of the adequacy of annual reports to be submitted for water quality protection zones and the assessment of fees. Promulgation and enforcement of these rules could affect private real property which is the subject of these rules.

The proposed rules will not involve a physical invasion, dedication, or exaction of real property which is the subject of the rules, do not restrict or limit a property right that would otherwise exist, and do not eliminate all economic uses of private real property which is the subject of the rules.

The commission has determined that there are no reasonable alternative actions that could accomplish the specified purpose of these rules.

The proposed rules do not require a capital expenditure, do enhance the value of the real property which is the subject of the rules, and do not impair the value of the real property which is the subject of the rules. The designation of water quality protection zones is voluntary for the owners of the property. Capital expenditure will be required only by those choosing to invoke the rule.

A public hearing on the proposal will be held on June 4, 1996, 2:00 p.m. in Room 201S, Building E of the Texas Natural Resource Conservation Commission Building, located at 12100 North IH-35, Park 35 Technology Center, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. 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 the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lutrecia B. Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-5687, with original written copy mailed to confirm faxed comments. All comments should reference Rule Log Number 95147-216-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 Arthur Talley, P.E., Non-Point Source Program, Watershed Assessment and Planning Section, Water Planning and Assessment Division, (512) 239-4546.

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.

The new rules are proposed under authority granted by §§26.003, 26.011, and 26.179 of the Texas Water Code, which concerns the designation of protection zones as approved by the Texas Natural Resource Conservation Commission. The sections are also proposed under the Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties under the Water Code and other laws of this state.

There are no other codes, statutes, or rules that will be affected by this proposal.

§216.1. Applicability. This subchapter applies only to those areas in which one or more water quality protection zones may be designated in accordance with §26.179 of the Texas Water Code. Nothing in this subchapter shall supersede or interfere with the applicability of water quality measures or regulation adopted by a conservation and reclamation district comprising more than two counties and which apply to the watershed area of a surface lake or surface reservoir that impounds at least 4,000 acre-feet of water. All other commission rules shall continue to apply within a water quality protection zone except to the extent there is an irreconcilable conflict between such rule and a rule or portion of rule in this subchapter. In such case, the latter shall control.

§216.2. Definitions. The definitions in §5.001 and §26.001 of the Texas Water Code apply to this subchapter and the following terms have the following meaning, unless the context clearly indicates otherwise.

Annual average constituent loadings—Average constituent mass loadings computed from samples collected over a one year period.

Average annual constituent loadings—Average constituent mass loadings computed from annual average constituent mass loading computations from multiple years.

Background levels of water quality—The average annual mass loading of water quality constituents in runoff from a water quality protection zone to waterways in the state that existed prior to the commencement of new development within a water quality protection zone.

Commencement of development—The commencement of physical site preparation, including, but not limited to, clearing, grading, leveling, excavation, or any other activities which alter or disturb the topographic, geologic, or hydrologic characteristics of a site.

Contiguous tract—A tract shall be deemed contiguous if all of its parts are physically adjacent, without regard to easements, rights-of-way, roads, streambeds, and public or quasi-public land, or if it is part of an integrated development under common ownership or control.

Developed area—Area within a designated water quality protection zone in which development has been completed.

Development—All land modification activity, including the construction of buildings, roads, paved storage areas, parking lots; the application of chemical constituents; the alteration of vegetative cover; land disturbing construction or human-made change of the land surface, including clearing of vegetative cover; excavating; dredging and filling; grading; contouring; mining; and depositing refuse, waste or fill, or any other activities which alter or disturb the topographic, hydrologic or geologic characteristics of land. Development shall be considered to be completed when 90% of the planned development is in place. Agricultural activities and minimal clearing (10 feet wide) such as for surveying and testing are excluded from this definition of development.

New development—Development that occurs after the designation of a water quality protection zone.

Phase of development—A stage of development identified in a water quality plan filed with the commission.

Responsible party—The owner or owners of land who designate their land as a water quality protection zone and any other entity or person approved by the executive director to be responsible for implementing the provisions of this subchapter in the zone.

Retention—The prevention of the discharge of a given volume of storm water runoff into the surface waters in the state by complete disposition of the water on-site.

Undeveloped site—A land area within a water quality protection zone that has not been modified by development.

Water quality plan—A plan meeting all applicable requirements provided by this subchapter.

Water quality protection zone—An area properly designated in accordance with §26.179 of the Water Code and, if applicable, §216.3 of this title (relating to Request for Approval to Designate Water Quality Protection Zones), as follows:

(A) A contiguous tract of land in excess of 1,000 acres that is located within an area subject to and properly designated in accordance with §26.179 of the Texas Water Code, or

(B) A contiguous tract of land containing less than 1,000 acres but not less than 500 acres that is located within an area subject to and, after prior approval of the commission in the manner described in §216.3 of this title (relating to Request for Approval to Designate Water Quality Protection Zones), properly designated in accordance with §26.179 of the Texas Water Code.

Waterways or water in the state—Includes ground water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

§216.3. *Request for Approval to Designate Water Quality Protection Zones.* Upon request of the owner(s), and after approval by the executive director, a contiguous tract of land containing less than 1,000 acres but not less than 500 acres may be designated as a water quality protection zone.

(1) *Content of Designation Request.* The request for the designation of a water quality protection zone shall include the following:

(A) a letter requesting approval to designate land as a water quality protection zone and the names, addresses, and telephone numbers, and sworn signatures of the applicant and agents authorized to act on behalf of the applicant;

(B) a map composed of United States Geological Survey 7.5 minute quadrangles delineating the location of the proposed water quality protection zone and a site plan using a minimum scale of one inch to 400 feet and showing floodplain boundaries and the layout of the development;

(C) a description of the proposed land uses within the zone including any plats or development plans for the affected property;

(D) copies of studies proposed to support the establishment of background levels of water quality in lieu of data collected from water quality monitoring sites located within the proposed zone;

(E) a water quality plan for the zone as described in §216.6 of this title (relating to Water Quality Plan);

(F) a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone;

(G) an identification of all adjacent water quality protection plans and a demonstration that the water quality plan for the proposed zone is compatible with these plans. The determination of whether plans are compatible include, but is not limited to, whether the cumulative impacts of such plans do not degrade the existing water quality of affected water in the state;

(H) payment of the application fee as described in this subchapter accompanied by support documentation for the calculation of the fee; and,

(I) additional information as may be required by the executive director to ascertain whether the proposed designation meets the requirements as specified in this section.

(2) *Review and Approval Procedures.*

(A) A request to designate a water quality protection zone shall be submitted to the executive director for review and approval. Responsible parties shall submit four (4) copies of the request to designate a water quality protection zone to the Austin Regional Office of the commission to the Attention of: Water Program Manager, TNRCC-Region 11, 1921 Cedar Bend, Suite 150, Austin, Texas 78758.

(B) The water quality plan for the water quality protection zone, including the determination of background levels of water quality, shall be signed and sealed by a registered professional

engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this subchapter.

(C) The executive director shall approve the request to designate a water quality protection zone unless the executive director finds that the implementation of the proposed water quality plan will not reasonably maintain background levels of water quality, the proposed water quality plan is not compatible with adjacent water quality protection plans, the plan would not maintain water quality sufficient to protect existing and designated uses of affected surface and ground water, or the plan is in conflict with state or federal law. The review and action on the request to designate a water quality protection zone shall be performed by the agency staff responsible for reviewing pollution abatement plans in the county where the proposed water quality protection zone is located.

(D) The review and action on the request to designate a water quality protection zone shall be completed within 120 days of the date it is properly filed with the commission. Written notice of the executive director's action on a request to designate a water quality protection zone shall be mailed to the applicant, the affected city, and the appropriate county judge(s), as set out in §216.7(a) of this title (relating to Actions and Notice).

(E) Approval of the request to designate a water quality protection zone will occur with the approval of the water quality plan for the zone.

(F) Once the designation is approved, the applicant shall record the designation in the deed records of the county in which the land is located, at which time the zone shall become effective.

§216.4. *Content and Effective Date of Designations.*

(a) *Content of Designations.* The designation of a water quality protection zone shall include the following:

(1) metes and bounds description of the zone;

(2) a description of the proposed land uses within the proposed zone, including a copy of any plats or development plans for the property within the proposed zone;

(3) a water quality plan for the zone containing the elements set out in §216.6 of this title (relating to Water Quality Plan);

(4) a general description of the water quality facilities and infrastructure to be constructed for water quality protection in the zone; and

(5) the sworn signature(s) of all owners of land within the zone.

(b) *Effective Date.* The creation of a water quality protection zone shall become effective upon recordation of a complete and accurate designation in the deed records of the county in which the land is located.

(c) Notice of such filing shall be given to the city clerk of the municipality within whose extraterritorial jurisdiction the zone is located and the clerk of the county in which the property is located. A certified copy of the water quality protection zone designation shall be filed with the executive director immediately after its recordation with the county clerk, but not later than two working days from the date of such county recordation.

(d) *Expiration.* Such designation shall expire:

(1) upon denial of the related water quality protection plan unless the denial is under appeal to a court of competent jurisdiction;

(2) upon expiration of a plan for failure to commence construction within five years of approval of the plan as provided by §216.6(d) of this title (relating to Water Quality Plan); or

(3) annexation of the zone by a municipality.

§216.5. Responsible Parties.

(a) Responsible parties include, but may not be limited to, the owners of property within a designated water quality protection zone. Responsible parties are jointly and severally responsible for all requirements of this subchapter, including the preparation, submission, implementation and maintenance of the water quality plan; the preparation and submittal of annual reports; the implementation of necessary and appropriate corrective actions and plan amendments; and the payment of fees.

(b) Persons or entities may, upon application, be approved by the executive director as responsible parties, in addition to or in place of existing responsible parties, based upon an assessment of such evidence as the executive director shall reasonably request including information that demonstrates satisfactory legal, financial and administrative capabilities to provide for the proper long-term operation and maintenance of the water quality zone in accordance with the approved water quality protection plan. As part of such evidence, the executive director may require assurance of financial responsibility in the form of a bond or otherwise. As a condition of substituting a responsible party, the executive director may require satisfaction of any delinquent obligation for which the retiring responsible party is liable under this subchapter.

§216.6. Water Quality Plan.

(a) Water Quality Protection. The water quality plan for a designated water quality protection zone shall be designed and implemented to achieve water quality protection by:

(1) maintaining background levels of water quality in waterways in a manner described in this subchapter; or

(2) capturing and retaining the first 1.5 inches of rainfall from developed areas in a manner described in this subchapter.

(b) Contents. Immediately after recordation, a water quality plan shall be submitted to the executive director for approval unless prior designation approval is given under §216.3 of this title (relating to Requests for Approval to Designate Water Quality Protection Zones). A water quality plan shall be site-specific, and shall include the following components:

(1) Determination of Background Levels of Water Quality. A water quality plan seeking to achieve water quality protection by maintaining background levels of water quality shall include the following procedures and information:

(A) Site Background Water Quality Data. Data sufficient to establish background levels of water quality shall be collected from one or more water quality monitoring sites located within the designated zone;

(i) Water quality monitoring sites shall be located so as to be representative of runoff from all areas within the water quality protection zone, including developed and undeveloped areas. Water quality monitoring of developed runoff from areas shall be representative of areas where management measures are implemented to the maximum extent practicable and therefore representative of water quality conditions that are attainable in developed areas. Water quality monitoring of undeveloped areas shall be representative of conditions prior to any development activity. Sufficient supporting information including drainage area, storm water flow, land uses, best management practices and statistical analyses shall be submitted to establish the representativeness of the data.

(ii) Information relevant to the determination of average annual mass loadings at sites located within the water quality protection zone shall, at a minimum, be submitted for the following constituents: total suspended solids, total nitrogen, total phosphorus, chemical oxygen demand and biochemical oxygen demand. Sufficient supporting information including sampling locations, the types of samples collected, sampling schedule, sampling procedures, sampling equipment, laboratory analytical methods, analytical results, computational methods, and data quality assurance records shall be submitted to establish the adequacy of the data.

(iii) Water quality monitoring at each site shall consist of a minimum of one stage (flow) composite sample for at least four storm events of one-half inch or more of rainfall that occur at least one month from the previous rainfall event of one half inch or greater and that are preceded by at least 72 hours without measurable precipitation. Water quality monitoring at each site shall be of sufficient frequency to be an accurate measure of annual average constituent loadings at that site. Sufficient supporting information such as statistical analyses, literature citations or program references shall be submitted to establish the completeness and reliability of the data.

(iv) If sufficient data collected from water quality monitoring sites located within the area designated as a water quality protection zone are not available, a water quality monitoring plan to collect such data shall be submitted. The water quality monitoring plan shall specify procedures, methods and information that are consistent with the requirements stated in this section. Calculation procedures as described in subparagraph (B) of this paragraph will be followed during the interim period until sufficient data are collected from sites located within the water quality protection zone.

(B) Calculation of Background Levels of Water Quality. If sufficient data collected from water quality monitoring sites located within the area designated as a water quality protection zone are not available, calculations performed and certified by a registered professional engineer utilizing the concepts and data from the National Urban Runoff Program (NURP) study or other studies approved by the executive director for the constituents resulting from average annual runoff may be used to establish background levels of water quality until sufficient data are collected from sites located within the water quality protection zone.

(i) Concepts and data for developed areas shall be representative of areas where management measures are implemented to the maximum extent practicable and therefore representative of water quality conditions that are attainable in developed areas. Concepts and data for undeveloped areas shall accurately represent conditions prior to any development activity. Sufficient supporting information including land uses, data quality and watershed characteristics shall be submitted as necessary to establish the accuracy of the calculations and representativeness of the results.

(ii) Studies proposed to support the establishment of background levels of water quality shall be specified and copies provided for review by the executive director prior to the submission of a water quality plan or plan amendment. A water quality plan or plan amendment may rely only upon studies approved by the executive director prior to submission of the plan or amendment. Review of studies proposed to establish background levels of water quality shall be separate from the executive director's review of a water quality plan or plan amendment.

(2) Water Quality Performance Monitoring. Responsible parties for plans that seek to achieve water quality protection of developed areas by maintaining background levels of water quality shall monitor water quality at four or more locations representative of where runoff from the water quality protection zone enters waterways or waters in the state.

(A) Water quality performance monitoring shall be conducted for at least the following constituents: total suspended solids, total nitrogen, total phosphorus, chemical oxygen demand and biochemical oxygen demand.

(B) A water quality monitoring plan for collecting performance data shall be included in the water quality plan. The water quality monitoring plan shall include project design, data quality objectives, proposed sampling locations, the types of samples to be collected, sampling schedule, sampling procedures, sampling equipment, laboratory analytical methods and data quality assurance provisions, computational methods, and reporting requirements. Specific data may be omitted with prior approval of the executive director.

(C) Water quality performance monitoring sites shall be located so as to be representative of annual average mass loadings from all areas within the water quality protection zone. Water quality performance monitoring sites shall be located at points representative of where runoff from the zone enters waters in the state. Sufficient supporting information including drainage area, storm flows, land uses, loading calculations and statistical analyses shall be submitted to establish the accuracy and representativeness of the proposed data collection program.

(D) Water quality performance monitoring shall consist of a minimum of one stage (flow) composite sample for at least four storm events per year of one-half inch or more of rainfall that occur at least one month from the previous rainfall event of one half inch or greater and that are preceded by at least 72 hours without measurable precipitation. Water quality monitoring at each site shall be of a frequency that will give an accurate measure of annual average constituent loadings at that site. Complete copies of sufficient supporting information such as statistical analyses, literature citations, or program references shall be submitted to establish the sufficiency of the proposed data collection program.

(E) Water quality performance monitoring shall occur for three consecutive years after each phase of development is completed within the water quality protection zone. Each new phase of development, including associated best management practices and amendments, if applicable, to a water quality plan for an existing phase of development, will require water quality performance monitoring for a three-year period. If responsible parties can show good cause, the executive director may determine that water quality performance monitoring is required for less than a three-year period.

(F) The results of the water quality performance monitoring shall be the basis for calculating annual average constituent loadings from the water quality protection zone. These values shall be compared with the values determined to represent background levels of water quality to evaluate compliance of the water quality plan with the water quality protection requirements of this subchapter. These results shall be reported to the executive director as described in §216.9 of this title (relating to Corrective Actions).

(3) Storm Water Capture and Retention. Water quality plans seeking to achieve water quality protection by capturing and retaining runoff from the first 1.5 inches of rainfall from developed areas within the water quality protection zone shall not be required to conduct water quality monitoring, as described in paragraphs (1) and (2) of this subsection.

(A) Supporting information including drainage area, storm water flows, land uses, determination of runoff co-efficients,

capture volume calculations, pollution removal efficiency, water management plan, facility design criteria, ground-water protection provisions, and facility maintenance plans shall be submitted and shall establish the adequacy of the proposed water quality protection measures to capture and retain the required volume of rainfall runoff. Design criteria shall demonstrate the capture and retention of the required volume of rainfall. Maintenance provisions shall ensure the continued performance of management facilities.

(B) Water quality plans shall include provisions for maintaining rainfall records including rainfall volumes, facility water levels and discharge volumes; water reuse records including reuse volumes and reuse locations; facility maintenance records; or other supporting information and record keeping provisions approved by the executive director.

(C) Storm water reuse plans shall specify design and operational criteria for drawing down storm water in retention facilities. Storm water reuse plans shall include provisions for using best management practices including the siting of irrigation areas and irrigation methods.

(4) Best Management Practices. Water quality plans shall include a description of all the best management practices to be utilized to protect water quality in the water quality protection zone during and after construction, an estimate of the pollutant removal efficiencies of these best management practices, and the procedures to be used to monitor and maintain these best management practices. Only those management practices described in the approved water quality plan shall be used. Upon request and with sufficient supporting data, design criteria or other similar information may be accepted in lieu of design specifications for best management practices.

(A) Best management practices specified in the approved water quality plan shall be required for all areas under development within a water quality protection zone to prevent and/or control the erosion of sediments from the area during and after construction.

(B) Records shall be kept by the responsible parties and furnished to the executive director upon request. Records shall be sufficient to verify consistent use of best management practices, including operational and maintenance activities.

(5) Stream erosion. Water quality plans shall include a description of all measures to be taken to avoid or minimize changes in which water may enter a stream as a result of construction and development that would increase flashing, create stronger flow and stream velocity, or otherwise increase instream erosion and further water quality degradation.

(c) Submittal, Review, Approval and Amendment Procedures. The water quality plan for a water quality protection zone, including the determination of background levels of water quality, shall be signed and sealed by a registered professional engineer acknowledging that the plan is designed to achieve the water quality protection standard defined in this subchapter.

(1) Upon recordation in the county deed records, the water quality plan shall be submitted to the executive director for review and approval unless approved under §216.3 of this title. The executive director shall approve the plan unless the implementation of the plan will not reasonably maintain background water quality or would not maintain water quality sufficient to protect existing and designated uses of affected surface and ground water.

(2) A water quality plan may be amended from time to time by the filing of a request for amendment signed by all the responsible parties with the executive director and in the deed

records of the county where the original plan is filed. All such proposed amendments shall be submitted to the executive director for review and approval on the same basis as the original plan. The executive director shall require an amendment by the responsible party to enforce additional water quality protection measures instituted by the commission to comply with mandatory state and federal water quality requirements, standards, antidegradation policies, permit provisions and regulations or other mandatory requirements under other state and federal law. If the performance monitoring and best management practices indicate that background levels were not maintained during the previous year, as described in §216.9 of this title (relating to Corrective Actions), modifications to the plan are required for future phases of development in the zone and to improve operational and maintenance practices in existing phases to the extent reasonably feasible and practical.

(3) Review and action on a water quality plan shall be performed by the agency staff that is responsible for reviewing pollution abatement plans in the county where the water quality protection zone is located. Responsible parties shall submit four copies of the proposed water quality plan or the amendment for the zone to the Austin Regional Office of the agency to the Attention of: Water Program Manager, TNRCC-Region 11, 1921 Cedar Bend, Suite 150, Austin, Texas 78758. The review and action on the plan or amendment shall be completed within 120 days of the date a plan or amendment meeting all requirements under this subchapter is filed with the executive director. If prior to the executive director approval of a plan or amendment, the applicant proposes a substantial change to such plan or amendment, the applicant shall notify the executive director in writing of its intent to withdraw the current plan or amendment from consideration. On recordation in the deed records of the county in which the land is located, the changed plan or amendment shall be submitted to the executive director whose review and approval of the changed plan or amendment shall be completed within 120 days of the date the revised plan or amendment is filed with the executive director. If the executive director approves the plan, notice of the approval shall be mailed as provided in §216.7(a) of this title (relating to Actions and Notice). A plan is approved if 120 days from the date of submittal has passed without comment from the executive director. In such event, no notice beyond what is required by §216.7(a) of this title is necessary.

(4) The executive director shall deny approval of a water quality plan or amendment that does not meet the requirements set forth in §26.179 of the Texas Water Code and this subchapter. Notice of the denial, including the reason for determination, shall be mailed to the applicant, county judge, and the affected municipality as provided in §216.7(a) of this title (relating to Actions and Notice). Unless the applicant appeals the denial in a court of competent jurisdiction, the applicant shall record the notice of denial in the deed records of the county in which the land is located.

(d) Effective Date and Term. The water quality plan, or amendment thereto, shall be effective upon recordation of the plan or the amendment in the deed records and except as provided by §216.3 of this title, shall apply during the period of review and approval by the executive director or appeal of the denial of the plan or any amendment. The plan and these rules shall be a covenant running with the land. The effectiveness of a plan or amendment shall terminate upon final action of the executive director disapproving it, or if commencement of development does not occur within five years of the effective date of the plan.

(e) Effect of the Plan. A water quality protection zone in which a water quality plan meeting the requirements of this subchapter is implemented shall be deemed to satisfy all other state and local requirements for the protection of water quality, provided that development in the zone complies with all applicable state laws and commission rules regulating water quality which are in effect on the date the zone is designated and those adopted thereafter as described in subsection (c)(2) of this section.

§216.7. Actions and Notice.

(a) The public notice requirements of this section apply to requests for approval to designate a water quality protection zone, requests for approval of water quality plans, and requests for approval of amendments to water quality plans.

(1) The executive director shall mail notice of the receipt of the requests to the county judge of each county in which property included in the application is located and the municipality in whose extraterritorial jurisdiction the zone is located.

(2) Each notice of a request shall specify both the name, affiliation, address and telephone number of the applicant and of the agency employee who may be reached to obtain more information about the request. The notice shall include a copy of the map or other description or location of the subject property which is filed with the request.

(3) The executive director shall mail a copy of the letter of approval or disapproval of any requests to the applicant, to the county judge of each county in which property included in the request is located, and to the municipality in whose extraterritorial jurisdiction the zone is located.

(b) Public Comment on Requests. Any person may provide to the executive director written comments on any new requests for approval to designate a water quality protection zone or requests for approval of a new or amended water quality plan. The executive director shall review any written comments received within 30 days after the notice is mailed and may use the information contained therein in considering action on the request.

§216.8. Annual Reporting Requirements.

(a) An annual report shall be submitted to the executive director no later than April 1 of each calendar year during the development of the property and for three consecutive years after each phase of development is completed within the water quality protection zone. The executive director shall review the annual report. The annual report shall be either a technical or operational report or combination of both dependent upon the method used to achieve water quality protection as described in §216.6 of this title (relating to Water Quality Plans).

(1) Technical reports for water quality protection plans that achieve water quality by maintaining background levels of water quality as described in this subchapter shall include information sufficient to establish that background levels of water quality were maintained in the water quality protection zone during the previous year. This information shall include water quality monitoring, best management practices, record keeping, water quality protection assessment, and any corrective actions taken.

(A) Reporting on water quality monitoring shall include the results of monitoring runoff from the water quality protection zone to determine background water quality levels and monitoring the performance of the water quality plan. Information on water quality monitoring reported to the executive director shall include sampling locations, sampling procedures, analytical results, results of quality assurance provisions, calculations of event mean concentrations at each location, and calculation of annual average system constituent loadings from the water quality protection zone to waters in the state.

(B) Information pertaining to best management practices reported to the executive director shall include a description of the type and location of all best management practices utilized to protect water quality in the water quality protection zone, an assessment of the performance of each best management practice and documentation of maintenance activities performed on each structural control measure. For rainfall retention facilities the report shall

include records of rainfall dates and volumes; retention facility daily water levels and discharge volume, while holding water; storm water reuse records, including locations and volumes; and facility maintenance data.

(2) Operational reports for water quality protection plans that achieve water quality by capturing and retaining the first 1.5 inches of rainfall from developed areas as described in this subchapter shall include for each retention facility records of rainfall dates and volumes; retention facility daily water levels and discharge volume, while holding water; stormwater reuse records including locations and volumes reused; and facility maintenance data.

(b) The annual report shall include an assessment of the water quality plan for the water quality protection zone in meeting the water quality protection requirements of this subchapter. If the water quality protection assessment indicates that the water quality plan for the water quality protection zone failed to meet the requirements as described in §216. 9 of this title (relating to Corrective Actions) proposed corrective actions shall be included in the annual report.

§216.9. Corrective Actions.

(a) Water quality protection zones shall be considered to be in compliance with the requirements of this subchapter if constituent mass loadings from the water quality protection zone after development are comparable to background levels of water quality established for the zone as described in §216.6(b)(1) of this title (relating to Water Quality Plan). Water quality protection plans may be presumed to have maintained comparable, pre-development background levels of water quality if constituent mass loadings are not greater than 10% above background levels. Such presumption is rebuttable. Water quality protection zones shall be out of compliance and require corrective action if constituent mass loadings from the water quality protection zone after development are greater than 10% above the background levels established for the zone.

(b) If the performance monitoring and best management practices indicate that background levels were not maintained or that the required volume of rainfall was not retained during the previous year, the responsible parties for the water quality protection zone shall:

(1) amend the water quality plan for future phases of development in the water quality protection zone to the extent reasonably feasible and practical; and

(2) amend the operational and maintenance practices in existing phases of the water quality protection zone to the extent reasonably feasible and practical.

(c) The extent to which water quality protection can not be achieved within existing phases of development shall be considered in future phases of development within the water quality protection zone. Approval of water quality plans for future phases of develop-

ment within the water quality protection zone will be denied if they do not consider failures of water quality plans in existing phases of development to achieve water quality protection as prescribed in this subchapter.

§216.10. Enforcement. Failure by any person or entity to comply with any provision of this subchapter or an approved water quality protection plan shall subject the violator to the prosecution of enforcement action and liability for penalties as provided in Chapter 26 of the Texas Water Code and the commission's enforcement rules contained in Chapter 337 of this title. Nothing in this section affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

§216.11. Fee Schedule.

(a) Application Fee. For requests for approval to designate water quality protection zones, the submittal of water quality plans for designated water quality protection zones and the submittal of amendments to water quality plans for designated water quality protection zones, a non-refundable application fee shall be assessed based upon the total acreage of development proposed in the zone or portion of the zone under consideration by the proposed action. Application fees shall be assessed at a rate of \$25 per acre of proposed development. Payment of the application fee must be submitted at the time that requests for approval to designate a water quality protection zone or requests for approval of water quality plans or plan amendments are submitted to the commission. The payment of the application fee shall be accompanied by documentation of how the application fee was calculated. A proposed designation, plan, or amendment shall be denied if not accompanied by the appropriate fee.

(b) Annual Fee. For each water quality protection zone, an annual compliance and inspection fee shall be assessed based upon the total acreage of development that exists within the water quality protection zone at the end of each calendar year. Annual fees shall be assessed at a rate of \$10 per acre of development. Payment of the annual fee shall be made at the time of the submittal of the annual report. The payment of the annual fee shall be accompanied by documentation of how the annual fee was calculated.

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 April 22, 1996.

TRD-9605655 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: June 7, 1996

For further information, please call: (512) 239-4640



WITHDRAWN RULES

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

TITLE 25. HEALTH SERVICES
Part II. Texas Department of Mental
Health and Mental Retardation
Chapter 401. System Administration
Subchapter A. Advisory Committees

• 25 TAC §401.7

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repeal to §401.7, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective April 23, 1996. The repeal as proposed appeared in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8560).

TRD-9605722

◆ ◆ ◆
Chapter 408. Standards and Quality Assurance
Subchapter A. Standards of the Texas Department of Mental Health and Mental Retardation-Quality Assurance

• 25 TAC §§408.1-408.10

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repeals to §§408.1-408.10, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective April 4, 1996. The repeals as proposed appeared in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8069).

TRD-9605719

◆ ◆ ◆
TITLE 28. INSURANCE
Part II. Texas Workers' Compensation
Commission

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

Subchapter G. Treatments and Services Requiring
Preauthorization

• 28 TAC §134.600

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repeal to §134.600, submitted by the Texas Workers' Compensation Commission has been automatically withdrawn, effective April 23, 1996. The repeal as proposed appeared in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8576).

TRD-9605721

◆ ◆ ◆
• 28 TAC §134.601

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §134.601, submitted by the Texas Workers' Compensation Commission has been automatically withdrawn, effective April 23, 1996. The new section as proposed appeared in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8577).

TRD-9605720

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 1. ADMINISTRATION

Part V. General Services Commission

Chapter 125. Travel and Transportation Division

Travel Management Services

• 1 TAC §125.27

The General Services Commission adopts an amendment to §125.27, concerning travel agency contracting requirements as part of the State Travel Management Program, without changes to the proposed text as published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2085).

The amendment to §125.27 are adopted to correctly refer to "ARC/IATAN" (Airline Reporting Corporation and/or International Airline Travel Agent Network) under §125.27(b)(3) and (c)(2).

The amendment will correct two incorrect references to the acronym "ARC" under §125.27 to "ARC/IATAN".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Title 10, Subtitle D, §2171.002.

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 April 22, 1996.

TRD-9605603 David Ross Brown
Assistant General Counsel
General Services Commission

Effective date: May 13, 1996

Proposal publication date: March 19, 1996

For further information, please call: (512) 463-3960

TITLE 4. AGRICULTURE

Part VII. Texas Agriculture Resources Protection Authority

Chapter 101. General Rules

Subchapter A. Routine Procedures

• 4 TAC §101.1, §101.2

The Agriculture Resources Protection Authority (the Authority) adopts amendments to §101.1 and §101.2, concerning definitions and meetings, without changes to the proposed text as published in the October 27, 1995, issue of the *Texas Register* (20 TexReg 8887). The amendments are adopted to make the rules consistent with legislative changes made to the Texas Agriculture Code, §76.009 by the 74th Legislature (1995).

The amendments will function by providing greater language clarity and consistency between the statutes and regulations of the Authority.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §76.009, which provides the Texas Agriculture Resources Protection Authority with the authority to adopt rules relating to any duty of the Authority.

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 April 23, 1996.

TRD-9605644 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Agriculture Resources Protection Authority

Effective date: May 14, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 463-7583

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.10

The Railroad Commission of Texas adopts an amendment to §3.10, concerning production of oil and gas from different strata, with changes to the proposed text as published in the February 6, 1996, issue of the *Texas Register* (21 TexReg 822). The amendment conforms §3.10 to Texas Natural Resources Code, §85.046 and §86.012, as amended. The amended rule authorizes the commission, after notice and an opportunity for affected parties to request a hearing, to approve commingled production administratively. Approval without a hearing is authorized when neither the applicant nor the parties entitled to notice have requested a hearing, and the commission finds that production in a commingled state will prevent waste, promote conservation or protect correlative rights. The amended rule also delineates persons entitled to notice of both initial and subsequent applications for commingling exceptions and clarifies what constitutes commingled production.

Notice of initial applications involving only commission-designated fields must be given to all operators in the fields sought to be commingled. For initial applications involving hydrocarbon reservoirs that have not been designated as fields and for all subsequent applications, the notice provisions incorporate the presumption (also found in §3.37(c) of this title, concerning statewide spacing), that operators closer than the minimum lease-line distance prescribed by applicable field rules may be affected by the requested exception and are therefore entitled to notice of the request. The standard for consideration of a requested exception is set out in §3.10(b).

The language in §3.10(b)(1) tracks the current wording of the underlying statutes and concisely states that only an opportunity for a hearing, and not an actual hearing, is required prior to the grant of an exception. A definition of "different strata" has been inserted as new §3.10(a)(1)

and the phrase "different strata" is used throughout the proposed text of this section to cure apparent ambiguities in the existing section caused by the use of different phrases to describe the same concept. The specific language of the definition of "different strata" was chosen because it is a concise statement of the concept of "different strata" as that phrase has historically been interpreted by the commission.

The notice provisions in §3.10(c) were added to formalize the commission's existing procedures regarding notice so that interested persons can easily identify those operators entitled to notice and the manner in which notice must be given. In addition, formalizing the notice procedures assures that notice requirements are applied consistently.

The specific categories of operators to be given notice reflect the presumption that all operators of adjacent tracts and of tracts within minimum lease-line distances, as set by applicable field rules, may be affected by a proposed exception for a given well. The notice requirements are broader for initial applications because of the potential precedential effect of a grant of an exception and the concomitant need for the commission to have information and input from all directly and indirectly impacted operators. The notice requirements are broadened to include all operators of adjacent tracts and of tracts nearer than minimum applicable lease-line distances when at least one of the hydrocarbon reservoirs for which commingling is sought has not been designated as a field by the commission. This broadening recognizes the potential for differing interpretations of whether a given accumulation of hydrocarbons should be considered as part of a commission-recognized field and the accompanying uncertainty as to which commission-designated fields might be affected by the proposed commingling.

The commission received comments from four entities regarding the proposed amendments to §3.10; two comments favored adoption of the amendments without any changes, and two favored adoption with changes to the rule as published. Three of the four comments were filed by groups or associations.

The Texas Independent Producers and Royalty Owners Association ("TIPRO") favors adoption of the proposed amendments to §3.10 without changes. TIPRO indicated that the published text of the rule does "a good job conforming the rule to this change in the law and we support your efforts."

Conoco, Inc. ("Conoco") also favors adoption of the rule as proposed and recommends no changes to the published version of the rule. Conoco noted that the proposed rule is longer than the existing rule but concluded that "having all of the required procedural information in the rule provides considerable cost and time savings for the industry and assures consistent handling of commingling requests." Conoco further noted that the additional text in the rule does not set out any new requirements but "merely formalizes many of the unwritten procedural requirements operators have been required to observe."

The North Texas Oil and Gas Association ("NTOGA") filed comments generally favoring adoption but also suggesting three changes to the proposed language in §3.10. NTOGA recommends changing the definition of "different strata" so that commingling that does not include a commission-designated field but only involves two different hydrocarbon reservoirs that are not commission-designated fields ("wildcat reservoirs") is authorized. Ancillary to this recommendation, NTOGA proposed a change to provide for notice of the application when an operator applies to commingle two wildcat reservoirs.

The commission disagrees with this recommendation. Commingled production must include at least one commission-designated field, because production is reported and allowables are assigned based on fields. If exclusively wildcat reservoirs are commingled, there is no field to which production can be reported or on which to base an allowable assignment. To the extent NTOGA is suggesting that operators be allowed to designate a new field that consists of two or more wildcat reservoirs, procedures already exist whereby an operator can seek to have multiple wildcat reservoirs designated as a single new field and regulated as one field by the commission.

NTOGA also recommends deletion of the last sentence of §3.10(c)(3)(B), which relieves an applicant of the requirement of giving notice of its application to an operator that has been determined to be unaffected. NTOGA expresses concern about the commission determining whether an operator is potentially affected based solely on data submitted by the applicant and notes that offsetting operators may have additional information pertinent to the commingling application.

The provision for a determination of unaffected status is similar to the existing provision in §3.37(a)(3)(A) of this title, concerning statewide spacing. As written, the rule requires notice to all presumptively affected operators unless the applicant provides geological or engineering data conclusively establishing that the proposed commingling will not physically interfere with the production of hydrocarbons by the operator for which the unaffected designation is sought. This is a high standard and it would be an exceedingly unusual situation in which an applicant could obtain a determination that an immediately offsetting operator would be unaffected by a proposed commingling of production. The commission believes, however, that applicants should have the ability to seek and obtain determinations of unaffected status in appropriate situations, particularly with regard to non-adjacent operators in large fields. Although the commission shares some of NTOGA's concerns regarding determinations of unaffected status, the rule as written adequately addresses these concerns and the commission declines to adopt the proposed change.

NTOGA's final recommendation is that the commission add a provision to the proposed rule addressing the voiding of a commingling permit when changed circumstances result in an operator being adversely affected by continued commingling. The commission disagrees with this recommendation. The commission's general rules of practice and procedure (§§1.1-1.152 of this title, concerning practice and procedure) provide for complaint proceedings seeking cancellation of commission-issued permits. Complaints may be filed when circumstances have changed such that the continued operation of the permit will cause waste or improperly interfere with the correlative rights of the complaining party. Because a procedure already exists allowing an aggrieved operator to seek cancellation of an existing commingling permit, a redundant provision addressing that same subject matter should not be added to §3.10.

Texas Mid-Continent Oil and Gas Association ("TMOGA") filed comments generally agreeing with the proposed changes but also suggesting a number of changes to the proposed language of §3.10. TMOGA recommends changing "string of casing" to "string of tubulars" throughout the rule. The phrase "string of casing" is in the text of the rule as it currently exists and it was used in the proposed language because no change in the situations to which §3.10 applies is intended. The commission agrees with TMOGA, however, that "string of tubulars" is a more accurate description and the text of the rule, as adopted, has been changed to substitute "tubulars" in place of "casing" throughout the rule. This change is strictly one of nomenclature and does not alter in any way the commission's interpretation of what constitutes down-hole commingling to which §3.10 applies.

TMOGA recommends deletion from §3.10(a) of the parenthetical "(including multiple stratigraphic or lenticular accumulations of hydrocarbons regulated as a single field by the commission)." The commission agrees that the parenthetical is not essential because the concept it expresses is subsumed by the general reference to "commission-designated fields" and that parenthetical language has been deleted from the rule as adopted. TMOGA also correctly points out that the word "promotion" rather than the correct word, "promote," was published in §3.10(b). That typographical error has been corrected in the text of the adopted rule.

TMOGA next recommends adding a provision that applications will be considered on a well, designated area, lease, or field-wide basis. The commission disagrees with this recommendation because its substance is already incorporated into the proposed text; §3.10(b) indicates that an application may be to "permit a well or wells" to commingle production. Clearly, the rule envisions that an application may be for multiple wells. The commission believes that applications should specify the well or wells covered rather than using some less precise reference such as "designated areas," so that all affected operators will have notice of the specific well or wells that will be affected by the relief sought by the applicant. Further, an application on a field-wide or designated area basis would effectively be a field consolidation, a procedure already authorized by other commission rules.

TMOGA recommends numerous changes to the published language of §3.10 so as to limit the right to notice and opportunity for hearing to initial applications to commingle production from different strata. TMOGA's recommendations would eliminate any requirement of notice for all subsequent applications once a single application involving the same fields has been approved. The commission disagrees with this recommendation.

The statutes which authorize §3.10 empower the commission to authorize commingled production "after notice and opportunity for hearing . . . if the commission finds that the commingling will prevent waste, promote conservation, or protect correlative rights." The statutes make no distinction between initial and subsequent applications, and, accordingly, notice and opportunity for hearing are called for in both situations. Consistent with past commission practice concerning commingling, the adopted rule does have less extensive notice requirements for subsequent applications than for initial applications.

TMOGA recommends deleting §3.10(c)(1)(B) which sets out the procedure for giving notice of application, because, it asserts, these procedures are well established through commission rules "and accepted standards of practice." In the alternative, TMOGA recommends requiring notice to an operator's most recent P-5 address and deletion of the option of serving notice by facsimile. The commission disagrees with the recommendation to delete §3.10(c)(1)(B). It is necessary that notice procedures be delineated to ease the administrative burden by avoiding inconsistencies and by insuring that parties entitled to notice are given notice.

TMOGA's alternative recommendations illustrate that proper notice procedures are not uniformly agreed on, as TMOGA asserts. The published text of §3.10(c)(1)(B) is taken nearly verbatim from §1.48(c) of this title, concerning service in protested contested cases. This rule appears to be the most nearly applicable existing rule, yet TMOGA asserts that service to last known addresses and the option of serving by facsimile transmissions, as provided in that rule, are inappropriate. Similarly, applicants' timing in giving notice has not been consistent. Currently, applicants often send notice of application to others significantly before filing the application with the commission. At times, this has resulted in a protest being filed prior to the application itself, which can lead to problems in properly matching a protest to a subsequently filed application, particularly if the subsequently filed application is not identical to the earlier version that was sent to affected parties. The commission believes it is essential that notice procedures be clear and consistent and the adopted rule retains a delineation of notice procedures.

The commission agrees with TMOGA's suggestion, however, that notices be directed to an operator's most current P-5 address rather than its last known address. Requiring notice to P-5 addresses is appropriate for this rule since all of the potentially affected parties are operators who are required to maintain current addresses on file with the commission through the annual filing of P-5s and interim address updates, when necessary. Because Form P-5 filings are not required to include facsimile numbers, and because of potential problems in proving receipt of notice, the commission also agrees that the option of serving notice by facsimile transmission should be deleted. The adopted rule reflects both of these changes to the notice procedures.

Finally, TMOGA suggests deletion of language relating to lease line distance. The commission disagrees with this suggestion. In the rare instance in which an operator is within minimum lease line distance but not adjacent to a tract on which commingling is proposed, this provision provides important protection. When an operator is within the zone that is presumptively affected by commingling, his right to notice should not depend on the fortuitous location of lease lines.

The commission adopts the amendments pursuant to Texas Natural Resources Code, §§81.052, 85.201, and 86.042, which authorize the commission to prevent waste of oil and gas and to protect correlative rights. For more information call Colin K. Lineberry at (512) 463-7051.

§3.10. Restriction of Production of Oil and Gas from Different Strata.

(a) General prohibition. Oil or gas shall not be produced from different strata through the same string of tubulars except as provided in this section. As used in this section, "different strata" means two or more different commission-designated fields, or one or more commission-designated fields and any other hydrocarbon reservoir.

(b) Exception. After notice and an opportunity for a hearing, the commission or its delegate may grant an exception to subsection (a) of this section to permit production from a well or wells commingling oil or gas or oil and gas from different strata, if

commingled production will prevent waste or promote conservation or protect correlative rights.

(c) Notice of Application for Exception

(1) Timing of Notice

(A) The applicant shall give notice of each request for an exception by serving a copy of the application to commingle production on all affected operators at the same time the application is filed with the commission.

(B) Service shall be accomplished by delivering a copy of the application to the operator to be served, or to the operator's duly authorized representative, in person, by agent, by courier receipted delivery, by first class mail to the operator's mailing address as shown on the operator's most recently filed Form P-5 (Organization Report) or the most recently filed letter notification of change of address, or by such other manner as the commission may direct.

(2) Operators Presumptively Affected By Application

(A) An initial exception to commingle production exclusively from different commission-designated fields is presumed to affect all operators in each of the commission-designated fields proposed to be produced through the same string of tubulars.

(B) An initial exception to commingle production from a commission-designated field with production from one or more hydrocarbon reservoirs that have not been designated by the commission as a field is presumed to affect all operators in each of the different commission-designated fields proposed to be produced through the same string of tubulars and all operators of adjacent tracts, and of tracts nearer to the well for which a commingling exception is sought than the longest applicable minimum lease-line distance.

(C) An exception to commingle production exclusively from the same commission-designated fields for which an initial commingling application has previously been granted is presumed to affect all operators of adjacent tracts, and of tracts nearer to the well for which a subsequent commingling exception is sought than the longest applicable minimum lease-line distance, who have a well completed in one or more of the commission-designated fields for which commingling is sought.

(D) An exception to commingle production from a commission-designated field and one or more hydrocarbon reservoirs in specified correlative intervals that have not been designated by the commission as fields, for which an initial commingling exception involving the same fields and hydrocarbon reservoirs has previously been granted, is presumed to affect all operators of adjacent tracts, and of tracts nearer to the well for which a commingling exception is sought than the longest applicable minimum lease-line distance.

(3) Notice Required Only to Affected Operators

(A) Except as provided in subparagraph (B) of this paragraph, all operators described in subsections (c)(2)(A)-(D) of this section are affected by a requested exception to allow commingling and the applicant shall give each of them notice of the application as provided in subsection (c)(1)(A) of this section.

(B) The commission or its delegate may determine that an operator described in subsections (c)(2)(A)-(D) will be unaffected by a requested exception to allow commingling. This

determination shall be made only upon the applicant's written request and provision to the commission of competent geological or engineering data establishing conclusively that commingling production as requested by the applicant will not physically interfere with the production of hydrocarbons by the operator for which an unaffected determination is requested. An applicant for an exception to allow commingling is not required to give notice of the application to an operator who has been determined to be unaffected as provided in this subparagraph.

(d) Commingled production. Commingled production of gas from different strata pursuant to Subsection (b) of this section shall be considered production from a common source of supply for purposes of proration and allocation.

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 April 23, 1996.

TRD-9605641 Mary Ross McDonald
Assistant Director, Gas Services, Office of General
Counsel
Railroad Commission of Texas

Effective date: May 14, 1996

Proposal publication date: February 6, 1996

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



Chapter 20. Administration

Subchapter B. Access To and Charges For Records

- 16 TAC §§20.101, 20.103, 20.104, 20.105, 20.110, 20.111, 20.114, 20.115, 20.120

The Railroad Commission of Texas adopts amendments to §§20.101, 20.105, 20.110, 20.115, and 20.120, and new §§20.103, 20.104, 20.111, and 20.114, relating to access to and copies of public records, without changes to the proposed text as published in the October 27, 1995, issue of the *Texas Register* (20 TexReg 8890). The text of the adopted rules will not be republished.

The amendments define new terms and revise some charges and procedures for providing copies of public records and access to public information for inspection. House Bill 1718, Acts 1995, 74th Legislature, Chapter 1035, §15, amended the Open Records Act, Government Code, Chapter 552, Subchapter F, to require state agencies to follow rules adopted by the General Services Commission (GSC) for determining charges for public information, unless expressly exempted by GSC. On August 25, 1995, the commission requested an exemption from GSC for charges different from GSC's as well as approval for charges for items not currently listed by GSC. The commission submitted calculations determining actual cost for each of its proposed charges. GSC, on September 15, 1995, gave its determination on the commission's requested exemption. Calculations relating to the commission's charges and the correspondence between GSC and the commission are a part of the record of this rulemaking and are available for inspection from the commission's internal auditor, Gary Brinkley, at Railroad Commission of Texas, 1701 North Congress Avenue, Room 12-127B, Austin, Texas, (512) 463-7276.

The amendments to §20.105 relating to charges for providing copies of public information and §20.120, relating to charge schedule, reflect changes in commission charges in accordance with the determination of GSC and clarification on when additional charges may be assessed consistent with House Bill 1718. Changes in charges include reductions in the cost of paper copies of microfilm, microfiche or unit jackets (reduced from \$.25 to \$.10 per copy); oversized copies (reduced from \$.35 to \$.10 per foot); and personnel (reduced from \$17.40 to \$15 per hour). The commission is also adding charges for faxing requested information as approved by GSC.

The amendment to §20.110, relating to inspection of paper records, implements House Bill 1718's requirement of no charge for inspection

of paper records with the exception of deleting confidential information. The amendment to §20.115, relating to estimates and waivers of public information charges, clarifies when a bond or deposit may be required and when information has to be made available to a requestor—both changes as a result of House Bill 1718.

New §§20.103, 20.104, and 20.111, relating to information in an electronic or magnetic medium; requests for information that require programming or manipulation of data; and inspection of electronic record if copy not requested, implement House Bill 1718's new requirements for processing requests for computer information. New §20.114, relating to information excepted from disclosure, clarifies that the commission, by Chapter 20 of this title (relating to Access to and Charges for Open Records), does not waive any right or duty to withhold information it considers excepted from disclosure in accordance with Government Code, Chapter 552, Subchapter C. Chapter 20 applies only to information that is not excepted from disclosure under the Open Records Act, Government Code, Chapter 552.

The commission received no comments on the proposed rules.

The commission adopts the amendments and the new rules under Government Code, Chapter 552, Subchapter F; House Bill 1009, Acts 1993, 73rd Legislature, Chapter 428, §5; and House Bill 1718, Acts 1995, 74th Legislature, Chapter 1035, §15, which require state agencies to promulgate rules setting out charges for copies of public records.

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

Issued in Austin, Texas, on April 23, 1996.

TRD-9605642 Mary Ross McDonald
Assistant Director, Gas Services, Office of General
Counsel
Railroad Commission of Texas

Effective date: May 14, 1996

Proposal publication date: October 27, 1995

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



TITLE 22. EXAMINING BOARDS

Part XVI. Texas Board of Physical Therapy Examiners

Chapter 321. Definitions

- 22 TAC §321.1

The Texas Board of Physical Therapy Examiners adopts amended §321.1, concerning Definitions, with changes to the proposed text as published in the November 21, 1995 issue of the *Texas Register* (20 TexReg 9664).

This section is being amended to clarify the procedure by which a physical therapist or physical therapist assistant supervises physical therapy aides.

Comments were received on the proposed amended 321.1 Definitions from: Anne Ellis, Colleen Basler, Lynn Laird, Karen Hartzler, Seton Hospital; W. Edward Berger, Baylor Medical Center at Garland; Janda L. Edwards, Baylor Institute For Rehabilitation; Judith C. Waterston, BaylorWorx; Luci Short, Texas Hospital Association; Mathew T. Wall, Harris Methodist Erath County; Charles Campbell, Patricia Alford, Kelly Finney, Southeast Baptist Hospital; Harry Smith, McKenna Memorial Hospital; Terry Hay, Judy McClanahan, Drew Hofstad, Ann Glasscock Laura Goodwin; and Gary Gray, Texas Physical Therapy Association.

Comments expressing support for changes proposed to 321.1(F)(i) were received from Lynn Laird.

Comments expressing opposition to proposed changes to 321.1(F)(i) were received from Seton Hospital, Texas Hospital Association, Harris Methodist Erath County, and Texas Physical Therapy Association.

Comments expressing support to changes proposed to 321.1(F)(v) were received from Lynn Laird.

Comments expressing opposition to proposed changes to 332.1(F)(v) were received from Texas Hospital Association, Harris Methodist Erath County, and Texas Physical Therapy Association.

Comments expressing support for changes proposed to 321.1(F)(iv)(i) were received from Colleen Basler.

Comments expressing opposition to proposed changes to 321.(F)(iv)(B) were received from Seton Hospital, Baylor Medical Center at Garland, Baylor Institute for Rehabilitation, BaylorWorx, Harris Methodist Erath County, McKenna Memorial Hospital, Southeast Baptist Memorial Hospital, Karen Hartzler, and Ann Ellis.

The board held a public hearing on the proposed changes to Chapter 321 on January 22, 1996. The following persons either testified and/or submitted written statements regarding the proposal: Susan Jones, Texas Hospital Association; Pauleen Kocak, Columbia Medical Center of McKinney; Luci Short & Janta Edwards, Baylor Health Care System; Steve Cole, Warm Springs Rehabilitation System; Cherie Simpson, Rehability Corp; and Donald F. Haydon, Texas Physical Therapy Association.

Summaries of the comments and the board responses are as follows:

COMMENT: 321.1(F)(i). Four commenters said that physical therapy assistants are capable of obtaining information regarding patient condition and discussing the information with a physical therapist.

RESPONSE: The board is withdrawing the proposed changes and will reconsider changes to 321.1(F)(i) later.

COMMENT: 321.1(F)(v) Six commenters stated that physical therapist assistants are qualified to help the physical therapist determine if the patients are meeting or have met predetermined goals and are ready for discharge.

RESPONSE: The board is withdrawing the proposed changes and will reconsider 321.1(F)(v) later.

COMMENT: 321.1(F)(v)(B) Three commenters stated that proposed changes would add unnecessary cost to the delivery of medical services.

RESPONSE: The new rule leaves flexibility; the physical therapist or the physical therapist assistant may interact with the patient. The rule does not stipulate how much time the physical therapist or the physical therapist assistant must spend with a patient nor does the rule prohibit an aide from rendering physical therapy services.

COMMENT: 321.1(F)(v)(B) One person stated that a physical therapist should be allowed to decide when they need to interact with a patient.

RESPONSE: The new rule leaves flexibility; the physical therapist or the physical therapist assistant may interact with the patient. The rule does not stipulate how much time the physical therapist or the physical therapist assistant must spend with a patient, nor does the rule prohibit an aide from rendering physical therapy services.

COMMENT: 321.1(F)(v)(B) Three commenters stated that some patients receive physical therapy two or three times in one day.

RESPONSE: The new rule leaves flexibility; the physical therapist or the physical therapist assistant may interact with the patient. The rule does not stipulate how much time the physical therapist or the physical therapist assistant must spend with a patient nor does the rule prohibit an aide from rendering physical therapy services.

The amendment is adopted 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.

§321.1. Definitions. The following words, terms, and phrases, when used in the rules of the Texas Board of Physical Therapy Examiners, shall have the following meanings, unless the context clearly indicates otherwise.

Accredited curriculum in physical therapy education—A body of courses in a physical therapy program at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education that are substantially equivalent to or that surpass such accreditation standards as determined by board-approved credentialing agencies.

Accredited physical therapist assistant program—A body of courses at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

Evidence satisfactory to the board—Should all official school records be destroyed, sworn affidavits satisfactory to the board must be received from three persons having personal knowledge of the applicant's physical therapy education. These affidavits will not be used when official school records are available.

Hearing—An adjudicative proceeding concerning the issuance, denial, suspension, reprimand, revocation of license, after which the legal rights of an applicant or licensee are to be determined by the board.

On-site supervision—The physical therapist or physical therapist assistant is on the premises and readily available to respond.

Physical therapist assistant—The supervision of the physical therapist assistant shall include the following:

(A) The supervising physical therapist is responsible for and will participate in the patient's care.

(B) The supervising physical therapist must be on call and readily available.

(C) A current written plan of care will be formulated for each patient by the physical therapist. The plan of care shall be revised following periodic reevaluations by the physical therapist, not to exceed 30 days.

(D) Each progress note in a patient's chart made by a physical therapist assistant must include the name of the supervising physical therapist.

(E) The physical therapist may assign responsibilities to the physical therapist assistant to:

(i) provide physical therapy services as specified in the written plan of care developed by the physical therapist prior to treatment by a physical therapist assistant which includes:

(I) preparing patients, treatment areas, and equipment;

(II) implementing treatment programs that include therapeutic exercises; gait training and techniques; ADL training techniques; administration of therapeutic heat and cold; administration of ultrasound; administration of therapeutic electric current; administration of ultraviolet; application of traction; performance of intermittent venous compression; application of external bandages, dressings, and support; performance of goniometric measurement;

(III) modifying treatment techniques as indicated in the plan of care;

(ii) respond to acute changes in physiological state;

(iii) teach other health care providers, patients, and families to perform selected treatment procedures and functional activities;

(iv) identify architectural barriers;

(v) interact with patients and families in a manner which provides the desired psycho-social support by:

(I) recognizing his own reaction to illness and disability;

(II) recognizing patients' and families' reactions to illness and disability;

(III) respecting individual cultural, religious, and socioeconomic differences in people;

(IV) utilizing appropriate communicative processes;

(vi) demonstrate appropriate and effective written, oral, and nonverbal communication with patients and their families, colleagues, and the public;

(vii) recognize his own strengths and limitations and interpret for others his scope and function;

(viii) demonstrate safe, ethical, and legal practice;

(ix) understand basic concepts related to the health care system, including multidisciplinary team approach, quality care, governmental agencies, private sector, role of other health care providers, health care facilities, issues, and problems;

(x) understand basic principles of levels of authority and responsibility, planning, time management, supervisory process, performance evaluations, policies and procedures, and fiscal consideration (provider and consumer).

(F) The physical therapist assistant may not:

(i) specify and /or perform definitive (decisive, conclusive, final) evaluative and assessment procedures;

(ii) alter a plan of care or goals;

(iii) recommend wheelchairs, orthoses, prostheses, other assistive devices, or alterations to architectural barriers to persons;

(iv) sign progress notes which include assessments used to design or modify patient care;

Physical therapy—The evaluation, examination, and utilization of exercises, rehabilitative procedures, massage, manipulations, and physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound in the aid of diagnosis or treatment. Physical therapists may perform evaluations without referrals. Physical therapy practice includes the use of modalities, procedures, and tests to make evaluations. Physical therapy practice includes, but is not limited to the use of: Electromyographic (EMG) Tests, Nerve Conduction Velocity (NCV) Tests, Thermography, Transcutaneous Electrical Nerve Stimulation (TENS), bed traction, application of topical medication to open wounds, sharp debridement, provision of soft goods, inhibitive casting and splinting, Phonophoresis, Iontophoresis, and biofeedback services.

Physical therapy aide—All rules governing the direction of the physical therapist assistant are further modified for the physical therapy aide.

(A) The physical therapist or physical therapist assistant is responsible for the supervision of the physical therapy aide.

(B) The physical therapy aide may support physical therapy activities within the scope of on-the-job training and with on-site supervision by a physical therapist or physical therapist assistant within reasonable proximity of the physical therapy aide.

The physical therapist or physical therapist assistant must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.

(C) The physical therapy aide may not:

(i) evaluate, assess, and/or initiate physical therapy treatment including exercise instruction; or

(ii) write or sign physical therapy documents in the permanent record.

Supervision—The delegation and continuing direction by a person or persons responsible for the practice of physical therapist, physical therapist assistant, or physical therapy aide as specified in the Physical Therapy Practice Act.

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

Issued in Austin, Texas, on April 17, 1996.

TRD-9605379 John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners

Effective date: May 8, 1996

Proposal publication date: November 21, 1995

For further information, please call: (512) 305-6900

Chapter 341. License Renewal

• 22 TAC §341.1

The Texas Board of Physical Therapy Examiners adopts amended §341.1, concerning Requirements for License Renewal, with changes to the proposed text as published in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9666).

This section, is being amended to clarify what is necessary for renewal of a license as a physical therapist or physical therapist assistant.

This section informs licensees what is required to renew a license.

No comments were received regarding amendment of this section.

The amendment is adopted 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.

§341.1. Requirements for Renewal.

(a) Biennial renewal. Licensees are required to renew their licenses biennially by the end of the month in which they were originally licensed. Continuing Education Units (CEUs) are required to be submitted with renewal applications.

(b) The licensed physical therapist must complete, in each biennium, three CEUs.

(c) The licensed physical therapist assistant must complete, in each biennium, two CEUs.

(d) CEU requirements must be completed in the biennium preceding the licensee's biennial renewal month.

(e) The original program completion document must be retained by the licensee. This document must be signed and certified by the authorized person as per the course application. It shall include the:

- (1) licensee's name as printed on the renewal certificate;
- (2) license number of the licensee;
- (3) program date(s); and
- (4) CEU credits awarded.

(f) Copies of the original program completion document must be submitted to prove compliance with the required CEUs for the previous biennium. These documents must be submitted with the biennial license renewal.

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 April 17, 1996.

TRD-9605381 John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners

Effective date: May 8, 1996

Proposal publication date: November 21, 1995

For further information, please call: (512) 305-6900

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• **22 TAC §341.3**

The Texas Board of Physical Therapy Examiners adopts amended §341.3, concerning Qualifying Continuing Education Units, with changes to the proposed text as published in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9667).

This section is being amended to establish procedures for approving programs for continuing education.

This section informs licensees what is required to receive credit for continuing education offerings. The changes were to improve syntax only.

No comments were received regarding amendment of this section.

The amendment is adopted 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.

§341.3. Qualifying Continuing Education Units.

(a) One CEU is defined as ten contact hours of an accredited course or program.

(b) Program content and CEUs accreditation must be approved by the board or a board-approved organization. Programs must meet the following criteria.

(1) Program content must be easily recognizable as pertinent to the physical therapy profession and in the areas of clinical application, clinical management, behavioral science, or science. The content must be identified by instructional level, i.e. basic, intermediate, advanced.

(2) Program objectives must be clearly written to identify the knowledge and skills the participants should acquire during the course.

(3) Programs must be presented by a licensed health care provider, or by a person with appropriate credentials and/or specialized training in the field.

(4) The instructional methods related to the objectives must be identified.

(5) The procedures used to assess a licensee's participation and attainment of the program objectives must be submitted to the board.

(6) The participants must evaluate the program. A summary of these evaluations must be available to the board upon request.

(7) Records of each participant who attains the program objectives must be maintained for three years.

(c) College or university courses in the area of clinical application, clinical management, behavioral science, science, or

scientific research will be accepted. Courses will be credited at one CEU for each satisfactorily (grade of C or higher) completed credit hour. An official transcript must be submitted to the board office.

(d) Self-directed study.

(1) A publication or publications may be submitted to the board for consideration of up to one-half of the biennium CEU requirement. This request along with the publication, must be presented to the board office at least 60 days prior to the licensure renewal anniversary date. Submissions after this date will not be considered.

(2) Teaching or consultation in programs such as institutes, seminars, workshops, and conferences which are designed to increase professional knowledge in the field of physical therapy or other related fields and/or development and presentation of such a program may be submitted to the board for consideration of up to one-fourth of the biennium CEU requirement. The licensee must submit the request, along with the outline, program objectives, and the date and location of the presentation to the board office at least 60 days prior to the licensure renewal anniversary date. Submissions after this date will not be considered.

(e) Approval of CEU programs.

(1) To receive CEU credit for a program the program must be approved by the board either before or after it is attended. An application for continuing education units form must be completed and submitted to the board for approval of a program for CEUs with a fee set by the board. Only one fee is required for each program. Once the fee has been paid for a program, any number of persons may submit attendance at this program for CEU credit without paying additional fees. A program may be provided more than one time and at different locations within one year from the date that the course is first offered without payment of additional fees.

(2) An applicant may write to the board inquiring if a particular program is approved. Periodically, a log of approved programs may be provided to an applicant upon written request to the board and payment of appropriate fee, if any.

(3) Privileged sponsors.

(A) A privileged sponsor of CEU programs is an entity which has been approved by the Education Committee to have the authority to set specific CEU credits for its programs without further board review provided that privileged sponsor status is continually maintained.

(B) Application process for privileged sponsor status. An applicant for privileged sponsor status must:

(i) obtain approval from the board for two programs of at least .7 CEUs each within any 18 month period;

(ii) submit an application for permanent sponsorship to the board; and

(iii) comply with the board's standards and methods for approving a course for CEUs.

(C) Maintenance of privileged sponsorship. Omission, falsification or noncompliance with any of the following requirements will result in immediate withdrawal of the privileged sponsorship by the board. To maintain privileged sponsorship status an entity must:

(i) offer a minimum of one CEU program each calendar year;

(ii) submit to the board notification of each course to be offered. The board must receive this information prior to the

course offering. Information must include; name, address, and telephone number of sponsor; title, dates of presentation, and location of program; CEUs to be awarded; and name and signature of the person who will be signing the course completion certificates;

(iii) comply with a random review of the program documents by board representatives;

(iv) use the following statement in publicity: "This is a continuing education offering for Physical Therapists and/or Physical Therapist Assistants approved by the Texas Board of Physical Therapy Examiners which meets the requirement of Continuing Education Units"; and

(v) submit fee per course.

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 April 17, 1996.

TRD-9605375 John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners

Effective date: May 8, 1996

Proposal publication date: November 21, 1995

For further information, please call: (512) 305-6900

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation
Subchapter B. Insurance Holding Company System Regulatory Act

• 28 TAC §§7.201-7.205, 7.209

The Commissioner of Insurance adopts amendments to §§7.201-7.205, and 7.209, concerning administrative regulation under the Insurance Code, Article 21.49-1, also known as the Insurance Holding Company System Regulatory Act (the Act). Sections 7.201-7.205, and 7.209 are adopted without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9133). A public hearing was held on April 18, 1996.

The amendments are necessary to implement amendments to Insurance Code, Article 21.49-1, enacted by the passage of House Bills 1243, 2710, and 2793, 74th Legislature, 1995.

The adopted amendments will provide for effective and efficient administrative regulation under the Insurance Holding Company System Regulatory Act of insurers that are members of an insurance holding company system, including the regulation of commercially domiciled insurers that are subject to the Act. The adopted sections also include adoption by reference of revised Form HCDividend to be utilized pursuant to §7.203(n). The department has filed a copy of the revised form with the Secretary of State's Office, Texas Register Section, as part of this adoption. Persons desiring copies of these forms can obtain them from the Texas Department of Insurance, Financial Monitoring Unit, P.O. Box 149099, Mail Code 303-1D, Austin, Texas 78714-9099 or at the Financial Monitoring Unit office at 333 Guadalupe, Austin, Texas.

One commenter stated the sections as proposed would be overly costly and cause unreasonable delay in the regulatory process. The commenter also stated the amendment to §7.205(a) is contrary to the exemption of insurance holding company systems owned by five or fewer natural persons as provided for in the Act, §2(r). The amendment to §7.205(a) provides that a person seeking acquisition of control of an insurer that is a member of an insurance holding company system exempted by the Act, §2(r), must file an acquisition statement with the department.

The agency disagrees with the comments. The agency has determined that the costs and administrative burdens of the rules are minimized to the extent consistent with statute by existing exemptions for de

minimus or minor changes in ownership. The agency carefully reviewed the arguments relating to legal authority, and believes §7.205(a) to be consistent with both the statute on its face and with legislative intent. The 1995 amendment to §2(r) of the Act merely changed a discretionary exemption to an automatic exemption for those holding company systems owned by five or fewer natural persons. The exemption, by the clear language of the statute, applies only to an insurance holding company system, and not to natural persons or potential shareholders seeking to acquire control. The Act, §1(b) and §5(c), clearly requires that the commissioner scrutinize any person seeking to acquire control of an insurer in order to protect policyholders from those who would operate the insurer in a manner adverse to policyholder's interests. Further, the requirements for acquisition of control set out in §5 clearly state "[n]o person shall acquire in any manner any voting security of any domestic insurers" without meeting the requirements of the Act; thus the change of control or acquisition requirements apply to persons and not to holding company systems.

The Texas Department of Insurance received comments against the sections from the Insurance Alliance of America.

The amendments are adopted under the authority of Insurance Code, Articles 21.49-1 and 1.03A. Article 21.49-1, §11 authorizes the commissioner to issue such rules, regulations, and orders as shall be consistent with and shall carry out the provisions of the Insurance Holding Company System Regulatory Act and to govern the conduct of its business and proceedings under the Act. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department.

The following articles of the Insurance Code are affected by these rules: 1. 10, 1.10A, 1.32, 21.28, 21.28-A, 21.31, 21.32, 21.49-1, and 21.49-2C.

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 April 24, 1996.

TRD-9605659 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: May 15, 1996

Proposal publication date: November 3, 1996

For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY
Part I. Texas Natural Resource
Conservation Commission

Chapter 281. Applications Processing

Subchapter B. Consistency With Texas Coastal
Management Program

• 30 TAC §§281.40-281.48

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §§281.40-281.48, Subchapter B, relating to Consistency With Texas Coastal Management Program. Sections 281.41, 281.42, 281.43, and 281.45-281.48, are adopted with changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10502). Section 281.40 and §281.44 are adopted without changes and will not be republished. Appendix is being adopted with changes and Appendices B, C, D, and E are adopted without changes, however the section which contains these Appendices (§281.48) is being republished in its entirety.

The purpose of the new subchapter is to identify those commission actions which are subject to consistency with the goals and policies of the Texas Coastal Management Program (CMP) pursuant to the Coastal Coordination Act (the Act), Subchapters C and F, Chapter 33, Texas Natural Resources Code, and rules of the Coastal Coordination Council (CCC or council) contained in 31 Texas Administrative Code

(TAC), Chapters 501 and 505. Additionally the rules identify those actions which are subject to review by the council for consistency with CMP goals and policies. The rules also provide application notice and review procedures for actions which are subject to review for consistency with CMP goals and policies.

The Act was enacted to facilitate the development and implementation of a comprehensive coastal management program. The program's goal is to achieve better coordination among the various regulatory entities so that the most effective and efficient use of public funds may be made and to provide for more effective and efficient management of coastal natural resource areas (CNRA).

Accordingly, Texas Natural Resources Code §33.205 provides that an agency that takes an action expressly identified under the Act that may adversely affect a CNRA must be consistent with the goals and policies of the CMP developed by the council. The agency does this by affirming that it has taken into account such goals and policies and by issuing a written determination that a proposed action is consistent with program goals and policies. Such goals and policies are based generally upon the various state and federal laws applicable to the particular action.

Commission rulemaking actions specifically identified in the Act as subject to consistency with CMP goals and policies include the adoption of a rule relating to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Applicable commission permitting actions include wastewater discharge permits within the coastal boundary as delineated by the Act; the permitting of confined animal feeding operations within the coastal boundary; a permit for solid or hazardous waste treatment, storage, or disposal within the coastal boundary; creation of a special purpose district which would cover a part of the coastal barrier resources system or approval of bonds for the purpose of construction of infrastructure on coastal barriers; levee improvement or flood control projects within the coastal boundary; water quality certification under §401 of the federal Clean Water Act of a federal permit for certain activities within the coastal boundary; a declaration of an emergency and request for emergency release of water from a state-owned reservoir under Texas Water Code §16.195; and a permit for a new or additional appropriation of water meeting certain quantity and location criteria.

Because there were previous, extensive meetings with the affected public on these thresholds during the period the CMP was developed, a public hearing on the proposed rules was not held. However, the commission did receive two sets of written comments submitted by the Texas Chemical Council (TCC) and the Railroad Commission of Texas (RCT). Both sets of comments addressed specific sections of the proposed rules and requested clarification or additional explanation. Neither entity spoke in opposition to the rules.

The RCT contended that the preamble for the proposed rules did not set forth the specific individual basis for determination of the TNRCC's threshold levels to ensure that only those actions that present "unique and significant consistency issues" were subject to council review as provided by §505.10(a) (2) of the council rules. Such actions include those which, alone, may potentially adversely affect the functions and values of a CNRA.

Thresholds for wastewater permits were established based on criteria developed by the Environmental Protection Agency (EPA) and by rules adopted by the TNRCC. EPA has established a discharge of one million gallons per day (MGD) as a trigger for major and minor domestic wastewater facilities. TNRCC has also established 1 MGD as the trigger for requiring biomonitoring by the discharger. TNRCC utilizes a segment ranking system based on physical, chemical, and biological parameters to rate designated stream segments relative to their overall ecological value and to identify pristine water bodies. Those segments receiving scores of 1,000 points or less were considered for designation as priority segments under the CMP. The final list of segments was reviewed for the purpose of identifying other intrinsic values (i.e., recreation and fisheries productivity) not considered in the traditional water quality ranking format.

The 5 MGD threshold established for domestic wastewater facilities discharging into tidal segments was based on the EPA's trigger level for determining pretreatment requirements. Municipalities with discharges greater than 5 MGD have the potential for including businesses and industries that discharge contaminants not found in normal municipal discharges, and, thus, could pose a threat to the

coastal natural resources. Pretreatment screening allows EPA to identify these potential problems and establish effluent limits for these businesses.

Thresholds proposed for industrial wastewater permits were based on categorical limits established by EPA, whether they occur in a priority segment and, in the case of an amendment, if they increase the pollutant loading in a priority segment. EPA established guidelines for different industrial categories since the best control technology for in industry is not necessarily the best for another. These guidelines were developed based on the degree of pollutant reduction attainable by an industrial category through the application of control technologies. The commission believes the standards established by EPA in conjunction with the TNRCC's segment classification will best identify those "unique and significant" actions and, thus, afford protection for coastal waters.

The TNRCC has established a threshold for new permits for concentrated animal feeding operations based on §33.2052, Texas Natural Resources Code, Coastal Coordination Act and §505.11 of the CCC rules which identify those areas within one mile of a critical area or coastal waters. Since the statute does not address amendments or renewals, those actions are exempt from council review.

The creation of a district or the approval of a bond issue to support infrastructure projects which would completely or partially encompass a Coastal Barrier Resources System Unit as defined by the U.S. Fish and Wildlife Service under the federal Coastal Barrier Resources Act have been identified as having a potential for significant effects to coastal natural resource areas. Therefore, any application for such an action within a unit is established as the threshold.

For new permits and amendments to existing permits to store, take or divert water, the TNRCC has established a threshold for a new or increased appropriation of 5,000 acre-feet per annum inside the coastal boundary and 10, 000 acre-feet outside the boundary, but within 200 river miles of the coast. This threshold is based on Texas Water Code §11.152, which requires the TNRCC to consider the effects of an application for a water rights permit in excess of 5,000 acre-feet on fish and wildlife habitat. The TNRCC has established this threshold for this permitting activity because it reflects legislative recognition of projects which pose significant adverse impacts to a CNRA (fish and wildlife habitat). The threshold of 10,000 acre-feet for projects outside of the program boundary but within 200 river miles of the coast, was chosen based upon an evaluation of existing projects which have been assessed for their impacts on freshwater inflows to the bays and estuaries and where permit conditions have been provided to maintain such inflows.

The TNRCC's threshold for 401 Certification of 404 Corps of Engineer permit activities was limited to critical areas located within the coastal boundary, and was based on the high environmental functions and values, the sensitive nature of these areas, and the risk to future losses.

Thresholds for solid waste were based on the potential risk to human health and the environment of the activity and the sensitivity and environmental functions and values of the site selected within the CMP boundary. Any new permit or amendment which proposes an expansion has the potential for significant effects if they occur in coastal wetlands or in special flood hazard areas (100 year floodplain). Wetlands and floodplains are recognized as some of the most productive ecosystems in Texas and for this reason, state statutes and agency rules addressing the siting of solid waste facilities have been promulgated to evaluate the effect of activities associated with these facilities, if they occur in these areas. Since these effects are readily observable and measurable, the TNRCC established a threshold for activities associated with solid waste based on occurrence within wetlands or special flood hazard areas located within the CMP boundary.

It would be inappropriate to refer an action to the council which, by itself, did not impair the functions and values of a CNRA. Any council action on one such action without considering other actions which, cumulatively, pose a potential adverse impact to a CNRA would be unfair to the affected permittee and ineffective in providing comprehensive and adequate protection to CNRA's. Rather, cumulative impacts of actions which, individually, would not impair CNRA functions and values are addressed by the establishment of regulatory performance standards such as maximum total pollutant loading for a stream and corresponding effluent criteria to maintain the water quality standard for

affected water in the state. Such standards are provided in other commission rules that have been submitted to the council for certification that they are consistent with the CMP.

Both commenters recommended modifications to §281.42. Definitions, and in particular the definition for "program boundary". Since the present definition refers only to the inland boundary, the RCT recommended the definition be revised to reference the description of the program boundary set forth in the CMP. The commission agrees with this comment and has amended the rules to reflect the CMP boundary description as specifically provided in §501.3 of the council rules.

The TCC pointed out discrepancies in the proposed rules definition for "coastal barrier" and that contained in §501.3 of the council rules. It was recommended that a "free standing" definition or a straight reference to 31 TAC 501.3 be provided. The commission agrees with this comment and has amended the definition by specifically providing the language contained in the definition of this term as it is found in §501.3 of the council rules.

The TCC commented that a better cite for defining "Coastal Coordination Council" would be Texas Natural Resources Code §33.203(20). The commission agrees with this comment and has amended the definition as recommended.

The RCT commented that the definition of "Texas Coastal Management Program" was stated in terms of the "plans and goals" developed by the council without directly referencing the specific citation to CMP rules in which they are contained. The commission agrees with this comment and has modified the definition based on the RCT's comments.

The RCT identified a wording discrepancy in §281.43(a)(1) and suggested that wording in §505.30(b)(1) of the council rules should be incorporated into §281.43(a)(1) to clarify the language used by agencies when making consistency determinations. The commission agrees with this recommendation and has amended the section to reflect their comment.

The RCT commented that in §281.45 and §281.46 actions are primarily described as "applications" for permits, certificates, etc., rather than to the action itself as presented in §505.11(a)(6) of the CMP. The TNRCC agrees with this comment and has amended the rule accordingly.

The TCC recommended §281.45(a)(1)(A) and (B), §§281.45(a)(2)(A), 281.46(1)(A) and (B), and 281.46(2)(M) and (N) be structured in a parallel fashion and the term "new" be added to §281.45 (a)(1)(A), and the words "application for" be added to §281.46(2)(M) and (N). Section 281.45 and §281.46 address the universe of actions within the jurisdiction of the TNRCC subject to the CMP and those specific actions potentially subject to CCC review based on the proposed thresholds, respectively. This distinction between a broader universe of actions which must be consistent with the CMP and a subset of that universe containing actions which are subject to CCC consistency review is in accordance with council rules, thus, no changes are warranted. However, the commission does agree with the addition of the recommended terms as suggested by the RCT and has made the changes accordingly.

The RCT commented that §505.32 of the CMP rules provides for limited situations where the council may review actions below applicable thresholds and recommended §281.46 be amended to reflect this circumstance. The commission agrees with this comment and has amended the section accordingly.

The TCC suggested the term "municipal" be substituted for the word "domestic" in §281.46(2)(A) and (B). Since the term municipal is generally associated with discharges only from towns and cities, the commission believes the term domestic is more appropriate since it captures wastewater discharge other than that generated by municipalities. This would include such facilities as small "package" plants servicing small residential communities in rural settings.

The RCT commented that §281.46 did not include thresholds for the actions described under §281.45(C), (E), and (F). Actions taken under §281.45(C), declaration of an emergency and request for an emergency release of water under Texas Water Code, §16.195, is proposed for exemption from council review because of the issue of time for action by the council and the emergency nature of this action. Additionally, it is anticipated that requests made under this statute would be made in order to protect/preserve environmental conditions in the coastal area and would, therefore, create a benefit to CNRA's. There-

fore, the TNRCC staff believes no threshold is necessary for this action.

Section 281.45(F) addresses levee improvement or other flood control projects pursuant to Texas Water Code, §16.236 and Chapter 301 of this title. Section 16.236 provides that such projects must receive commission review and approval prior to their construction unless the project is within the jurisdiction of a local government participating in the National Flood Insurance Program and the local government enforces rules equal to or more stringent than those provided by commission rules. No threshold was established for these actions since all counties within the coastal boundary participate in the National Flood Insurance Program and enforce necessary requirements. Subject actions for this activity will be assessed through the federal consistency review process.

The creation of districts and/or approval of bond issues associated with §281.45(E) have a threshold established which delineates those actions which would encompass or partially encompass a Coastal Barrier Resources System Unit and those which would fall outside the units. Any actions which pertain to this section would be deemed to exceed this threshold and could, therefore, be referred to the council for review.

The RCT commented on the term "categorical limits" for industrial discharges in priority segments and recommended additional clarification to explain its meaning. The federal Clean Water Act requires all industries discharging wastes into navigable waters to achieve the Best Practicable Control Technology Currently Available (BPT) by July 1, 1977. This control technology represents the average of the best existing wastewater treatment performance with each industry category or subcategory. The U. S. Environmental Protection Agency (EPA) has established effluent guidelines and standards for more than 50 different industrial categories (e.g., Steam Electric Power Plants, Iron and Steel Manufacturing Facilities). Guidelines are established for different industrial categories since the best control technology for one industry is not necessarily the best for another. These guidelines were developed based on the degree of pollutant reduction attainable by an industrial category through the application of control technologies, irrespective of the facility location. The use of the EPA's guidelines and standards for industrial discharges will provide consistency for both the federal and state permitting activities within the program boundary.

The RCT asked for clarification regarding §281.46(2)(D)(ii) and the change in point of diversion for an industrial wastewater discharge into a priority water body segment. It is the intent of this threshold to distinguish a change in discharge from a non-priority water body into a priority segment, and not a change in discharge from one point to another within the same segment. Therefore, the section is amended accordingly.

The RCT commented on the threshold established for amendments to confined animal feeding operations (CAFO) provided in §281.46(2)(F) and indicated the CMP rules only apply to new permits. The commission agrees with this comment and has amended the appropriate section accordingly.

The RCT requested clarification of §281.46(2)(O) concerning the threshold established for the §401 water quality certification of federal permits for the discharge of dredge or fill material. The threshold established by TNRCC for the placement of dredge or fill material addresses the disposal into a critical area and not adjacent to such a designated area. An appropriate change has been made to §281.46(2)(O) clarify this point. A volume of less than 1000 cubic yards placed on one or more acres of area classified as critical would not constitute a significant long-term adverse impact when considering depth of deposition and areal extent.

The RCT commented on §281.47, indicating this section was not consistent with §505.11(d) of the CMP rules. The section has been amended to reflect the intent of §505.11(d).

The RCT also recommended the term "that" be added to §281.47(8) to clarify the meaning. The TNRCC staff agrees and has made the appropriate change.

The RCT suggested Appendix C should be clarified to indicate that all listed segments fall within the CMP boundary. The commission agrees and has made the appropriate change to Appendix C.

A takings impact assessment has been performed for these rules in accordance with Tex. Government Code Ann. §2007.043 and a finding

of no takings has been made. These rules do not add substantive requirements to existing regulations and do not affect real property value.

These rules are based upon rules adopted by the Coastal Coordination Council establishing the Texas Coastal Management Program, but which have not yet been made effective by the council. Accordingly, the commission rules shall not be implemented and enforced until the effective date of the council rules as provided by the adoption of amendments to 31 TAC, Chapter 505, and published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8643, 8664).

The new sections are adopted under Texas Water Code, §5.103 and §5.105, which provide the TNRCC 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 and to establish and approve all general policies of the commission.

§281.41. Condition of Approval. It is a condition of commission approval of a proposed action that such action, if applicable, must be consistent with the goals and policies of the Texas Coastal Management Program (CMP) as provided in rules of the Coastal Coordination Council contained in Chapters 501, 503, 505, and 506, Title 31, Texas Administrative Code. The executive director shall review such applications for consistency with the CMP and provide a summary of such analysis and other statements in the draft permit and technical summary or referral to commission as provided by §281.21 and §281.22 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary and Referral to Commission).

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

Application—Any request for a permit, order, or other authorization from the commission or executive director.

Coastal barrier—An undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service Maps.

Coastal Barrier Resources System—Consists of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary of the Interior entitled "Coastal Barrier Resources System" as defined under Section 4 of the Coastal Barrier Improvement Act of 1990.

Coastal Coordination Council (CCC or council)—A policy making and review body established by Senate Bill 1053, Coastal Coordination Act, Chapter 295, §§37 et seq Texas Laws (72nd Legislature 1991), codified in Texas Natural Resources Code, §33.203(20).

Coastal Natural Resource Areas—Areas as defined by Texas Natural Resource Code, §33.203(1) are as follows:

- (A) coastal barriers;
- (B) coastal historic areas;
- (C) coastal preserves;
- (D) coastal shore areas;
- (E) coastal wetlands;
- (F) critical dune areas;
- (G) critical erosion areas;
- (H) gulf beaches;

- (I) hard substrate reefs;
- (J) oyster reefs;
- (K) submerged land;
- (L) special hazard areas;
- (M) submerged aquatic vegetation;
- (N) tidal sand or mud flats;
- (O) water of the open Gulf of Mexico; and
- (P) water under tidal influence.

Coastal waters—Waters in the open Gulf of Mexico and water subject to tidal influence.

Commission—The Texas Natural Resource Conservation Commission.

Critical area—A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat (as defined in 31 TAC §501.3).

Priority segment—Those designated stream or bay segments delineated in Chapter 307 of this title (relating to Surface Water Quality Standards) and identified as priority segments because they are within the coastal boundary and exhibit characteristics of high water quality and require protection to maintain designated uses. Segment quality determinations were made using water quality traditional scoring for segment ranking and other factors to determine the quality of water relative to designated uses. These segments are listed in Appendix B of §281.48 of this title (relating to Appendices).

Program boundary—The boundary established in Texas Natural Resources Code, §33.2053(k), as defined in Title 31, Texas Administrative Code, §503.1 (relating to Coastal Management Program Boundary).

Texas Coastal Management Program—The plan and related goals and policies as developed by the CCC in accordance with Texas Natural Resources Code §33.204, and codified in 31 TAC Chapters 501, 503, and 505-506.

Tidal segment—Those designated stream or bay segments listed in §281.48 of this title Appendix C. These segments were designated as tidal segments because they have measurable elevation changes due to normal tides. In the absence of tidal elevation information, tidal segments are generally considered to be waters which typically have salinities of two parts per thousand or greater in a significant portion of the water column.

§281.43. Consistency Determination.

(a) A permit or other document approving or authorizing an action listed in §281.45 of this title (relating to Actions Subject to Consistency With the Goals and Policies of the Texas Coastal Management Program) shall include a statement providing either a consistency determination or a determination of no adverse effect as follows:

(1) Consistency Determination. "The Texas Natural Resource Conservation Commission (TNRCC or commission) has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies"; or

(2) Determination of No Adverse Effect. "The TNRCC has reviewed this action and has found that the action will not adversely affect any applicable coastal natural resource areas (CNRA) identified in the Texas CMP."

(b) The executive director shall review applicable requests and applications for consistency with CMP goals and policies and provide a brief summary of such analysis and other statements and recommendations in the draft permit and technical summary or referral to commission as provided by §281.21 and §281.22 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary and Referral to Commission), respectively.

(c) For actions that exceed the thresholds for possible referral to the council as provided by §281.46 of this title (relating to Actions Which May Be Referred to the Coastal Coordination Council for Review), a written explanation supporting the determination made under subsection (a) of this section shall be provided in the order, permit, or other written authorization. Such explanation shall describe the basis for the agency's determination, include a description of the action and its possible impacts on CNRAs, identify the applicable CMP goals and policies, and explain how the action is consistent with such goals and policies or why the action does not adversely affect any CNRAs.

§281.45. Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP).

(a) For purposes of this subchapter, the following is an exclusive list of actions taken or authorized by the Texas Natural Resource Conservation Commission (commission) or executive director that may adversely affect a coastal natural resource area and that must be consistent with the CMP goals and policies:

(1) For actions outside the program boundary when issuing or approving:

(A) an application for a new water right located within 200 stream miles of the coast and proposing an appropriation of 10,000 acre-feet of water per year or more;

(B) an application to amend a water right located within 200 stream miles of the coast and requesting:

(i) an increase in the annual appropriation of 10,000 acre-feet or more of water; or

(ii) a change in purpose of use to a more consumptive use of 10,000 acre-feet or more of water per year;

(C) an action under subparagraphs (A) or (B) of this paragraph shall not be considered an action subject to the CMP if it is an action taken to implement the Trans-Texas Water Program as approved in whole or in part, and found to be consistent with CMP goals and policies by the Trans-Texas Water Program Policy Management Committee, provided that the committee includes as voting members at least three members of the Coastal Coordination Council (CCC or council) or their designated representatives and a majority of those council members vote to approve and find that it is consistent with the CMP goals and policies.

(2) For actions inside the program boundary when issuing or approving:

(A) an application for:

(i) a new water right proposing an appropriation of 5,000 acre-feet of water or more per year;

(ii) an amendment to an existing water right requesting an increase in appropriation of 5,000 acre-feet of water

per year or more, or a change in purpose of use to a more consumptive use of 5,000 acre-feet of water or more per year;

(B) an action under subparagraph (A) of this paragraph shall not be considered an action subject to the CMP if it is an action taken to implement the Trans-Texas Water Program as approved in whole or in part, and found to be consistent with CMP goals and policies by the Trans-Texas Water Program Policy Management Committee, provided that the committee includes as voting members at least three members of the CCC or their designated representatives and a majority of those council members vote to approve and find that it is consistent with the CMP goals and policies;

(C) the declaration of an emergency and request for an emergency release of water under Texas Water Code §16.195;

(D) an application for the treatment, storage, or disposal of municipal, industrial, non-hazardous or hazardous waste;

(E) a petition for the creation of a special purpose district or approval of bonds for infrastructure on coastal barriers;

(F) a refusal for approval of a levee improvement or other flood control project pursuant to Texas Water Code §16.236 and Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation and Levees, and other Improvements);

(G) an application for state water quality certification of a federal permit pursuant to §401 of the federal Clean Water Act;

(H) a wastewater discharge permit; and

(I) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters; and

(3) the promulgation of rules governing or authorizing actions listed in paragraph (1) and (2) of this subsection, including rules as listed in Appendix E of §281.48 of this title (relating to Appendices);

(b) The review and action on an application or request for agency approval provided in subsection (a) (1), (2), and (3) of this section shall not be considered an action subject to the CMP goals and policies if the action is taken pursuant to rules that the council has certified as consistent with the CMP and:

(1) for wastewater discharge permits, if the action is not a major permit modification that would increase pollutant loads to coastal waters or would result in the relocation of an outfall to a critical area;

(2) for municipal, industrial, hazardous, or non-hazardous waste permits, if the action is not a Class III modification as defined in commission rules; or

(3) for any other action under this subsection if the action only extends the time period of the existing authorization without authorizing new or additional work or activities or is not otherwise directly relevant to the policies in 31 Texas Administrative Code §501.14. Such specific actions include, but are not limited, to those listed in §281.47 of this title (relating to Actions Not Subject to Referral for Council Review).

§281.46. Actions Which May Be Referred to the Coastal Coordination Council. Except as otherwise provided under 31 TAC §505.32

(relating to Requirements for Referral for an Individual Agency Action), only the following actions may be referred to the CCC for review for consistency with the CMP goals and policies pursuant to 31 TAC §505.26 (relating to Council Review and Approval of Thresholds for Referral):

(1) For actions outside the program boundary when issuing or approving:

(A) an application for a new water right located within 200 stream miles of the coast and requesting an appropriation of 10,000 acre-feet of water per year or more; and

(B) an application to amend an existing water right located within 200 stream miles of the coast and seeking:

(i) to increase an annual appropriation by 10,000 acre-feet or more per year; or

(ii) to change the purpose of use of 10,000 acre-feet or more to a more consumptive use.

(2) For actions inside the program boundary when issuing or approving:

(A) an application for a new domestic wastewater discharge permit:

(i) to discharge five million gallons per day (MGD) or more into a tidally influenced segment (see Appendix C of this title (relating to Appendices)); or

(ii) to discharge one MGD or more into a priority segment (see Appendix B of §281.48 of this title);

(B) an application for an amendment to a domestic wastewater discharge permit:

(i) to increase the total discharge authorized by the permit into tidally influenced segments (Appendix C) to an amount greater than or equal to five MGD; or

(ii) to increase the discharge to one MGD or more into a priority segment (Appendix B);

(C) an application for a new industrial wastewater discharge permit to discharge effluent subject to the United States Environmental Protection Agency's categorical limits into a priority segment (Appendix B);

(D) an application for an amendment to an industrial wastewater discharge permit:

(i) to discharge effluent subject to categorical limits that increase mass loading of pollutants into priority segments (Appendix B); or

(ii) to change the point of discharge from outside into a priority segment (Appendix B);

(E) an application for a new confined animal feeding operation (CAFO) permit for a CAFO located within one mile of a critical area or coastal waters;

(F) an application for a permit for a new municipal landfill to be located within a coastal wetland or a special flood hazard area, as defined in Title 44, Code of Federal Regulations (CFR) §59.1;

(G) an application for an amendment which proposes an expansion of a municipal landfill into a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(H) an application for a new permit for a commercial or industrial waste landfill to be located within a coastal wetland or special flood hazard area, as defined 44 CFR §59.1;

(I) an application for an amendment that proposes an expansion of a commercial or industrial waste landfill into a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(J) an application for a new hazardous waste landfill to be located within a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(K) an application for an amendment to expand a hazardous waste landfill into a coastal wetland or a special flood hazard area, as defined in 44 CFR §59.1;

(L) an application for a new water right proposing an appropriation of 5,000 acre-feet of water or more per year;

(M) an application to amend an existing water right requesting:

(i) an increase in appropriation of 5,000 acre-feet of water per year or more;

(ii) a change in purpose of use to a more consumptive use of 5,000 acre-feet of water per year or more;

(N) a certification of a federal permit for the discharge of dredge or fill material, which affects one or more acres in a critical area (as defined in §281.42 of this title (relating to Definitions)) and authorizes the discharge of not less than 1,000 cubic yards of dredged or fill material.

(3) For actions on coastal barriers only:

(A) any application for creation of a special purpose district whose service area would encompass, or partially encompass, a Coastal Barrier Resources System Unit as defined by the United States Fish and Wildlife Service under the Federal Coastal Barrier Resources Act, 16 United States Code (USC) §3502(7); or

(B) an application for approval of a bond issue to support infrastructure projects encompassing, or partially encompassing, a Coastal Barrier Resources System Unit as defined by the United States Fish and Wildlife Service under the Federal Coastal Barrier Resource Act, 16 USC §3502(7).

§281.47. Actions Not Subject to Referral For Council Review. The following individual agency actions are not subject to 31 Texas Administrative Code (TAC) Subchapter C, §§505.30-505.42, Consistency and Council Review of Individual State Agency Actions providing these actions are taken pursuant to rules that the council has certified as consistent under 31 TAC Chapter 505, Subchapter B of the CMP rules (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral):

(1) applications for renewal of domestic wastewater discharge permits;

(2) applications for renewal of industrial wastewater discharge permits;

(3) applications for renewal of confined animal feeding operation permits;

(4) applications for renewal of commercial or industrial landfill permits;

- (5) applications for renewal of hazardous waste landfills permits;
- (6) emergency suspension of permit conditions relating to beneficial inflows to affected bays and estuaries in accordance with Texas Water Code §11.148;
- (7) declaration of an emergency and request for an emergency release of water under Texas Water Code §16.195; and
- (8) any other actions not specifically listed under this subchapter or that do not otherwise meet the requirements of 31 TAC §505.32 (relating to Requirements for Referral of An Individual State Agency Action).

§281.48. Appendices.

(a) Appendix A. Texas Natural Resource Conservation Commission (TNRCC) Authorizations Reviewable by the Coastal Coordination Council.

Figure 1: 30 TAC §281.48(a)

(b) Appendix B. Tidal Segments Designated as TNRCC Priority Waterbodies.

Figure 2: 30 TAC §281.48(b)

(c) Appendix C. TNRCC Designated Tidal Segments Located Within the CMP Boundary.

Figure 3: 30 TAC §281.48(c)

(d) Appendix D. Districts in the Coastal Barrier Resources System.

Figure 4: 30 TAC §281.48(d)

(e) Appendix E. TNRCC Rules Relating to Actions Subject to the Coastal Management Program. All or part of the rules contained in these chapters may require certification by the council as consistent with the CMP before thresholds provided in §281.46 of this title (relating to Action Which May Be Referred to the Coastal Coordination Council) become effective. The listing of these chapters in their entirety is not intended to indicate that all these chapters or all rules in these chapters must be certified for the thresholds to become effective.

Figure 5: 30 TAC §281.48(e)

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 April 24, 1996.

TRD-9605656 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: May 15, 1996

Proposal publication date: December 12, 1995

For further information, please call: (512) 239-4640

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND
CONSERVATION

Part II. Texas Parks and Wildlife
Department

Chapter 57. Fisheries

Shell Dredging on the Texas Coast

• 31 TAC §57.45

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts amendment to §57.45, concerning permit applications for shell dredging on the Texas coast, without changes to the proposed text as published in the December 22, 1995, issue of the *Texas Register* (20 TexReg 10974).

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted amendment to §57.61 was reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the issuance of marl, sand, and gravel permits from public waters subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §20.07.002(5) of the Act.

The department received no public comment concerning the proposed amendment.

The amendment is adopted under authority of Parks and Wildlife Code, Chapter 86, which gives the commission authority to manage, control and protect marl and sand of commercial value and all gravel, shell, and mudshell located within tidewater limits of the state.

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 April 19, 1996.

TRD-9605567 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: May 13, 1996

Proposal publication date: December 22, 1995

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

◆ ◆ ◆
Issuance of Marl, Sand and Gravel Permits

• 31 TAC §57.61

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts amended §57.61, concerning issuance of marl, sand and gravel permits, without changes to the proposed text as published in the December 22, 1995, issue of the *Texas Register* (20 TexReg 10974).

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted amendment to §57.61 was reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the issuance of marl, sand, and gravel permits from public waters subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on

the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

The department received no public comment concerning the proposed amendment.

The amendment is adopted under authority of Parks and Wildlife Code, Chapter 86, which gives the commission authority to manage, control and protect marl and sand of commercial value and all gravel, shell, and mudshell located within tidewater limits of the state.

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 April 19, 1996.

TRD-9605570 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: May 13, 1996

Proposal publication date: December 22, 1995

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



Issuance of Oyster Leases

• 31 TAC §57.241

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts amendment to §57.241, concerning issuance of oyster leases, without changes to the proposed text as published in the December 22, 1995 issue of the *Texas Register* (20 TexReg 10975).

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted amendment to §57.241 was reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the issuance of oyster leases in public waters subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

The department received no public comment concerning the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 75, which gives the commission authority to regulate the planting and taking of oysters in public waters.

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 April 19, 1996.

TRD-9605568 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: May 13, 1996

Proposal publication date: December 22, 1995

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



Chapter 59. Parks

Administration of the Texas State Park System

• 31 TAC §59.75

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts new §59.75, concerning coastal management program, without changes to proposed text as published in the December 22, 1995 issue of the *Texas Register* (20 TexReg 10977).

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted §59.75 was reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the operation of the coastal management plan subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

The department received no public comment concerning the proposed new section.

The new section is adopted under the authority of Parks and Wildlife Code, Chapter 26, which gives the commission authority to protect public parks.

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 April 19, 1996.

TRD-9605573 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: May 13, 1996

Proposal publication date: December 22, 1995

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



Chapter 65. Wildlife

Subchapter G. Regulations for Taking, Possessing, and Transporting Threatened Nongame Species

• 31 TAC §65.174 , §65.182

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts amended §65.174 and §65.182, concerning regulations for taking, possessing and transporting threatened species, with changes to proposed text as published in the December 22, 1995, issue of the *Texas Register* (20 TexReg 10978).

Proposed §65.174(b) and §65.182(b) include a reference to permits issued under provisions of those sections. This reference, in both

subsections, was amended by the Commission to reflect specific section provisions in §§57.271-57.283 concerning scientific, educational and zoological permits.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted amendments §65.174 and §65.182 were reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the issuance of scientific, educational and zoological permits subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

The department received no public comment concerning the proposed amendments.

The amendments are adopted under authority of Parks and Wildlife Code, Chapter 43, which provides the commission authority to regulate the taking, transporting, and possession of protected wildlife for scientific, zoological, rehabilitation, and propagation purposes.

§65.174. Permit Required.

(a) No person may take, possess, or transport fish or wildlife from the wild, classified as threatened by §65.173 of this title (relating to Threatened Species), for scientific or zoological purposes unless a valid scientific or zoological permit has been obtained from the department as required by the Texas Parks and Wildlife Code, §§43.021-43.030.

(b) If the department determines that a permit issued under §§57.271-57.283 of this title (relating to Scientific, Educational and Zoological Permits) authorizes the take, transport, or possession of threatened species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application for a lease under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

§65.182. Permits to Take Certain Fish or Wildlife.

(a) No person may take, possess, or transport fish or wildlife classified as endangered species and named in §65.183 of this title (relating to Closed Seasons) for zoological gardens or scientific purposes, or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat, for propagation for commercial purposes, unless he has obtained a valid permit from the department as required by the Texas Parks and Wildlife Code, §§43.021-43.030.

(b) If the department determines that a permit issued under sections §§57.271-57.283 of this title (relating to Scientific, Educa-

tional and Zoological Permits) authorizes the take, transport, or possession of endangered species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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 April 19, 1996.

TRD-9605569 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: May 13, 1996

Proposal publication date: December 22, 1995

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

◆ ◆ ◆ Chapter 69. Resource Protection

Endangered, Threatened and Protected Native Plants

• 31 TAC §69.6, §69.9

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts amended §69.6 and §69.9, concerning endangered, threatened and protected plants, with changes to proposed text as published in the December 22, 1995, issue of the *Texas Register* (20 TexReg 10979).

Adopted §69.6(b) and §69.9(d) include a reference to permits issued under provisions of those sections. This reference, in both subsections, was amended by the Commission to reflect specific section provisions in §§69.1-69.14 concerning endangered, threatened and protected plants.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted amendments to §69.6 and §69.9 were reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the issuance of permits to take, possess, and transport threatened or endangered plants from public property subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

The department received no public comment concerning the proposed amendments.

The amendments are adopted under authority of Parks and Wildlife Code, Chapter 86, which gives the commission authority to regulate

the taking of endangered, threatened, or protected native plants for the purpose of propagation, education, or scientific studies.

§69.6. Scientific Plant Permit-Criteria for Issuance.

(a) The department will consider the following criteria in determining whether to issue or deny an application for a scientific plant permit:

(1) the performance of the applicant with respect to the observance of the terms of past permits;

(2) whether the information obtained will benefit the department in the management of the species requested by the applicant;

(3) whether the applicant has supplied adequate justification to substantiate the need to conduct the research;

(4) whether the research would substantially or unnecessarily duplicate existing research being conducted by other permittees who hold permits from the department;

(5) whether the applicant has adequate facilities to properly care for the plants requested;

(6) whether the applicant has adequate experience and professional qualifications in the field of study relating to the research requested to properly conduct the research with reasonable expectations of success; and

(7) whether the applicant has submitted a research proposal adequate to allow the department to properly evaluate the proposed research.

(b) If the department determines that a permit issued under sections §§69.1-69.14 of this title (relating to Endangered, Threatened and Protected Native Plants) authorizes the take, transport, or possession of endangered or threatened species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

§69.9. Commercial Plant Permit.

(a) Each person who desires to take, possess, or transport for commercial sale or who sells an endangered, threatened, or protected plant or part thereof, and each person who hires or pays another person to take, possess, or transport an endangered, threatened, or protected plant or part thereof, from private land is required to purchase a commercial plant permit from the department.

(b) Each person applying for a commercial plant permit will submit an application on a form provided by the department.

(c) Each request for a permit will be accompanied by a copy of the landowner's consent to take the endangered, threatened, or protected plants requested and by the required fee for a commercial plant permit specified by this subchapter.

(d) If the department determines that a permit issued under sections §§69.1-69.14 of this title (relating to Endangered, Threatened and Protected Native Plants) authorizes the take, transport, or possession of endangered or threatened native species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93

of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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 April 19, 1996.

TRD-9605571 Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Effective date: May 13, 1996

Proposal publication date: December 22, 1995

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

◆ ◆ ◆
Compliance With Coastal Management Plan

• **31 TAC §69.91, §69.93**

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing, January 25, 1996, adopts new §69.91 and §69.93, concerning compliance with coastal management plan. Proposed new §69.93 was adopted with changes to proposed text as published in the December 22, 1995 issue of the *Texas Register* (20 TexReg 10980). Proposed new §69.91 was adopted without changes and will not be republished.

Section 69.93(2) was amended by removal of reference to the taking of wild species for zoological or commercial propagation. The department believes that this specific reference was misleading, and that the threshold for all permits relating to activities associated with endangered or threatened species should be an administratively complete application.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities. The proposed new and amended rules contain a general requirement of consistency and propose a threshold for referral for each of the activities. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The adopted amendments to §69.91 and §69.93 were reviewed in the context of the Private Real Property Rights Preservation Act, Government Code, Chapter 2007 (Act) by legal counsel for the Resource Protection Division.

The subject of the action is to make the operation of the coastal management plan and the issuance of permits to take wild species for zoological or commercial purposes subject to final approval by the Coastal Management Council after action by the Parks and Wildlife Commission. Because the subject of the proposed action is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of Chapter 2007. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a "taking" in §2007.002(5) of the Act.

The department received no public comment concerning the proposed new sections.

The new rules are adopted under authority of Parks and Wildlife Code, Chapter 43, which gives the commission authority to regulate the taking, transporting, and possession of protected wildlife for scientific, zoological, rehabilitation, and propagation purposes; Chapter 76, which gives the commission authority to regulate the planting and taking of oysters in public waters; Chapter 86 which gives the commission

G 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, 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.

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	THRESHOLDS
WASTEWATER PERMITS: (inside the boundary)	
Municipal, new	<p>(1) Proposed permits to discharge into tidally influenced segments (See Appendix C) AND which would result in an authorized discharge greater than or equal to 5 MGD¹; or</p> <p>(2) Any permit which proposes to discharge into a priority segment (See Appendix B) which would result in an authorized discharge greater than or equal to 1 MGD².</p>
Municipal, amendments	<p>(1) Amendments to increase the total discharge into tidally influenced segments to an amount greater than or equal to 5 MGD; or</p> <p>(2) Amendments to discharge into a priority segment AND which would result in an increase in the authorized discharge to an amount greater than or equal to 1 MGD.</p>
Municipal, renewals	EXEMPT

¹ 5 MGD is the EPA trigger level for determining pretreatment requirements.

² 1 MGD is the trigger which requires biomonitoring, pursuant to TNRCC rules.

Figure 1: 30 TAC §281.48(a)

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	THRESHOLDS
WASTEWATER PERMITS: (inside the boundary)	
Industrial, new	(1) Proposed discharge permits for new facilities which are subject to categorical limits and which discharge into a priority segment (See Appendix B).
Industrial, amendments	(1) Proposed amendments to discharge permits for facilities which are subject to categorical limits, which either increase mass loadings into a priority segment OR change the point of discharge into a priority segment.
Industrial, renewals	EXEMPT

Figure 1: 30 TAC §281.48(a)

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	THRESHOLDS
WASTEWATER PERMITS: (inside the boundary)	
Agriculture (CAFOs), new	Any application for a new concentrated animal feeding operation (CAFO) within one mile of a critical area (as defined by TNRCC rule Chapter 281, Subchapter B, §281.42) or coastal water.
Agriculture (CAFOs), amendments	EXEMPT
Agriculture (CAFOs), renewals	EXEMPT
DISTRICT APPROVALS & BOND ISSUES: (on coastal barriers only)	
District creation	Any application for creation of a district whose service area would encompass, or partially encompass a Coastal Barrier Resources System Unit as defined by U.S. Fish & Wildlife Service under the federal Coastal Barrier Resources Act.
District bond issues	Any application for approval of a bond issue to support infrastructure projects encompassing, or partially encompassing a Coastal Barrier Resources System Unit as defined by U.S. Fish & Wildlife Service under the federal Coastal Barrier Resources Act.
401 CERTIFICATION: (inside the boundary)	
	Application for 401 certification of a 404 Corps of Engineer permit which affects one or more acres in a critical area (as defined in TNRCC rules Chapter 281, Subchapter B, §281.42) and authorizes the discharge of not less than 1,000 cubic yards of dredged or fill material, all or part of which occurs in a critical area.

Figure 1: 30 TAC §281.48(a)

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	THRESHOLDS
WATER RIGHTS: (inside the boundary)	
New	Any application for a new right, except emergency permits, for an annual appropriation of 5,000 acre-feet or more of water.
Amendments	Any application to amend an existing right: (1) to increase the annual appropriation of water by 5,000 acre-feet or more; or (2) to change the purpose of use of 5,000 acre-feet or more to a more consumptive use.
Renewals (reissues)	EXEMPT
WATER RIGHTS: (outside the boundary)	
New	Any application for a new right, except emergency permits, within 200 stream miles of the coast for an annual appropriation of 10,000 acre-feet or more of water.
Amendments	Any application to amend an existing right within 200 stream miles of the coast and seeking to: (1) increase the annual appropriation of water by 10,000 acre-feet or more; or (2) to change the purpose of use of 10,000 acre-feet or more to a more consumptive use.
Renewals ("reissues")	EXEMPT



APRIL 11, 1996

Figure 1: 30 TAC §281.48(a)

TNRCC AUTHORIZATIONS REVIEWABLE BY THE COASTAL COORDINATION COUNCIL	
AUTHORIZATION	THRESHOLDS
SOLID WASTE: (inside the boundary)	
Municipal, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Municipal, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Municipal, renewals	n/a (Municipal permits are issued for the life of the site.)
Commercial-Industrial, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Commercial-Industrial, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Commercial-Industrial, renewals	EXEMPT
Hazardous, new	Any new permit for a landfill to be located within a coastal wetland or a special flood hazard area (100 year floodplain).
Hazardous, amendments	Any amendment which proposes an expansion of a landfill into a coastal wetland or a special flood hazard area (100 year floodplain).
Hazardous, renewals	EXEMPT
LEVEE PROJECTS: (inside the boundary) Approval of levee impoundment or flood control projects	Not applicable: Pursuant to §16.236 of the Texas Water Code, approval of projects is delegated to local governments participating in the National Flood Insurance Program. All coastal counties participate in the program.
DECLARATION OF EMERGENCIES (pursuant to §16.195, Texas Water Code) (inside the boundary)	EXEMPT

Figure 2: 30 TAC §281.48(b)

APPENDIX B

**TIDAL SEGMENTS DESIGNATED AS TNRCC PRIORITY WATERBODIES
COASTAL MANAGEMENT PROGRAM**

Segment Number	Name
2412	Sabine Lake
2411	Sabine Pass
2423	East Bay
2439	Lower Galveston Bay
0801	Trinity River Tidal
1113	Armand Bayou Tidal
2431	Moses Lake
2424	West Bay
2432	Chocolate Bay
2433	Bastrop Bay/Oyster Lake
2434	Christmas Bay
2435	Drum Bay
2442	Cedar Lakes
2441	East Matagorda Bay
2451	Matagorda Bay/Powderhorn Lake
2452	Tres Palacios Bay/Turtle Bay
2456	Carancahua Bay
2455	Keller Bay
2461	Espiritu Santo Bay
2462	San Antonio Bay/Hynes Bay/Guadalupe Bay
1801	Guadalupe River Tidal
2463	Mesquite Bay/Carlos Bay/Ayres Bay
2473	St. Charles Bay
2471	Aransas Bay
2472	Copano Bay/Port Bay/Mission Bay
2483	Redfish Bay
2482	Nueces Bay
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/ Laguna Salada
2491	Laguna Madre
2493	South Bay

Figure 3: 30 TAC §281.48(c)

APPENDIX C

**TNRCC DESIGNATED TIDAL SEGMENTS
LOCATED WITHIN THE CMP BOUNDARY**

Segment Number	
2433	2426
2434	1107
2455	2439
2435	
2442	
2432	
2411	
2424	
2461	
2472	
2423	
2452	
2412	
2203	
2451	
2429	
2003	
2463	
2441	
2430	
2431	
2001	
2428	
1601	
1105	
2436	
1111	
2482	
1501	
2493	
2483	
1801	
2473	
2456	
1603	
2462	
2471	

Name
Bastrop Bay/Oyster Lake
Christmas Bay
Keller Bay
Drum Bay
Cedar Lakes
Chocolate Bay
Sabine Pass
West Bay
Espiritu Santo Bay
Copano Bay/Port Bay/Mission Bay
East Bay
Tres Palacios Bay/Turtle Bay
Sabine Lake
Petonila Creek Tidal
Matagorda Bay/Powderhorn Lake
Scott Bay
Aransas River Tidal
Mesquite Bay/Carlos Bay/Ayres Bay
East Matagorda Bay
Burnet Bay
Moses Lake
Mission River Tidal
Black Duck Bay
Lavaca River Tidal
Bastrop Bayou Tidal
Barbours Cut
Old Brazos River Channel
Nueces Bay
Tres Palacios Creek Tidal
South Bay
Redfish Bay
Guadalupe River Tidal
St. Charles Bay
Carancahua Bay
Navidad River Tidal
San Antonio Bay/Hynes Bay/Guadalupe Bay
Aransas Bay
Tabbs Bay
Chocolate Bayou Tidal
Lower Galveston Bay

Segment Number	Name
2494	Brownsville Ship Channel
0801	Trinity River Tidal
1109	Oyster Creek Tidal
2492	Baffin Bay/Alazan Bay/Cayo Del Grullo/ Laguna Salada
1113	Armand Bayou Tidal
2301	Rio Grande Tidal
2425	Clear Lake
1701	Victoria Barge Canal
2438	Bayport Channel
2422	Trinity Bay
1103	Dickinson Bayou Tidal
2454	Cox Bay
2101	Nueces River Tidal
2437	Texas City Ship Channel
0703	Sabine-Neches Canal
2485	Oso Bay
1304	Caney Creek Tidal
1401	Colorado River Tidal
0508	Adams Bayou Tidal
0501	Sabine River Tidal
0901	Cedar Bayou Tidal
0511	Cow Bayou Tidal
1301	San Bernard River Tidal
2491	Laguna Madre
2427	San Jacinto Bay
2484	Corpus Christi Inner Harbor
1013	Buffalo Bayou Tidal
1101	Clear Creek Tidal
1001	San Jacinto River Tidal
2481	Corpus Christi Bay
0702	Intracoastal Waterway
2421	Upper Galveston Bay
0601	Neches River Tidal
2201	Arroyo Colorado Tidal
1201	Brazos River Tidal
1005	Houston Ship Channel/San Jacinto River
2453	Lavaca Bay/Chocolate Bay
1005	Houston Ship Channel
1007	Houston Ship Channel/Buffalo Bayou

Figure 4: 30 TAC §281.48.(d)

APPENDIX D

DISTRICTS IN THE COASTAL BARRIER RESOURCES SYSTEM

Nueces County

Nueces County WCID #4 (1, 2)

San Patricio County

San Patricio MWD (2)

Aransas County

Aransas County Conservation & Reclamation District (1, 2)
Aransas County Navigation District (1, 2)

Matagorda County

Matagorda County Navigation District #1 (1, 2)

Brazoria County

Treasure Island MUD (1)
Blud Water MUD (1)
Velasco Drainage District (1, 2)
Brazos River Harbor Navigation District (1, 2)

Galveston County

Gulf Coast Water Authority of Galveston County (1, 2)
Harris-Galveston Coastal Subsidence District (1, 2)
Galveston County Navigation District #1 (1, 2)

Legend: (1) Coastal Barrier (Coastal Barrier Resources System or "Cobras")
 (2) Otherwise Protected Areas

Figure 5: 30 TAC §281.48(e)

Appendix E

TNRCC Rules Relating to Actions Subject to the Coastal Management Program

Administrative

- Chapter 261 Subchapters B and C, Environmental, Social, and Economic Impact Statements
- Chapter 281 Applications Processing

Water Discharge and Non-point Source Pollution

- Chapter 284 Private Sewage Facilities (Rules for Angelina and Neches River Authority)*
- Chapter 285 On-Site Wastewater Treatment*
- Chapter 305 Consolidated Permits
- Chapter 307 Supplemental Surface Water Quality Standards
- Chapter 309 Effluent Limitations
- Chapter 314 Toxic Pollutant Effluent Standards and Prohibitions
- Chapter 315 Pretreatment Regulations for Existing and New Sources of Pollution
- Chapter 321 Control of Certain Activities by Rule
- Chapter 334 Underground and Aboveground Storage Tanks*

Non-hazardous and Hazardous Solid Waste

- Chapter 305 Consolidated Permits
- Chapter 330 Municipal Solid Waste
- Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste

Dredging, Filling, and Other Activities or Development that May Affect Critical Areas

- Chapter 279 Water Quality Certification
- Chapter 293 Water Districts
- Chapter 301 Levee Improvement Districts, District Plans of Reclamation and Levees, and other Improvements

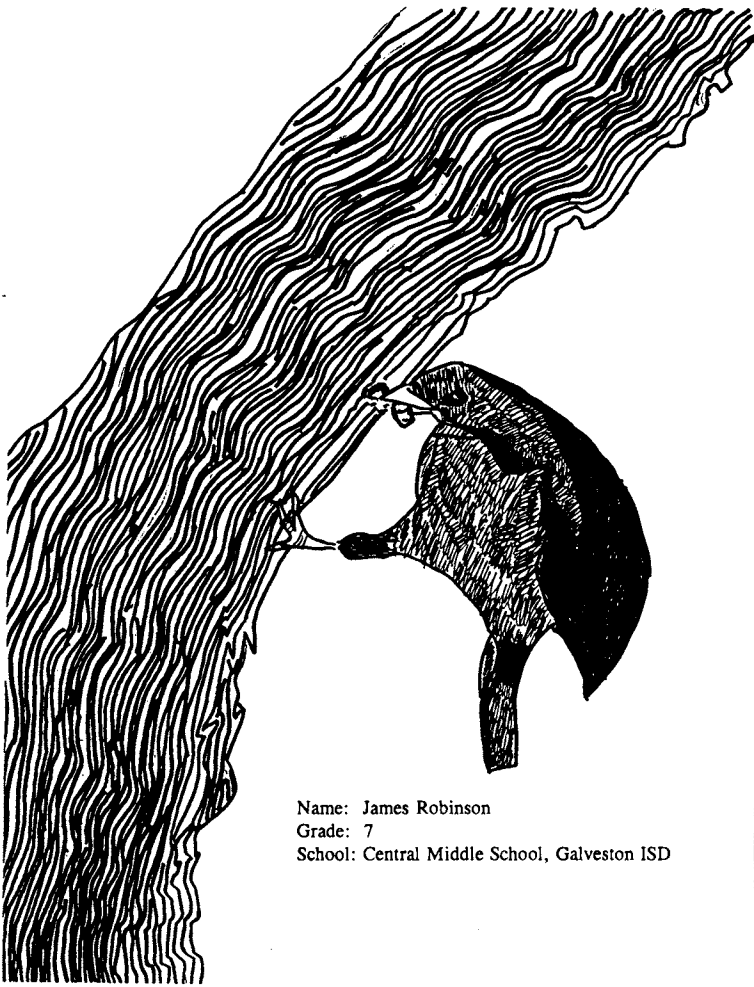
Instream Flows, Water Rights, and Water Conservation

- Chapter 288 Water Conservation Plans, Guidelines, and Requirements*
- Chapter 295 Water Rights, Procedural
- Chapter 297 Water Rights, Substantive

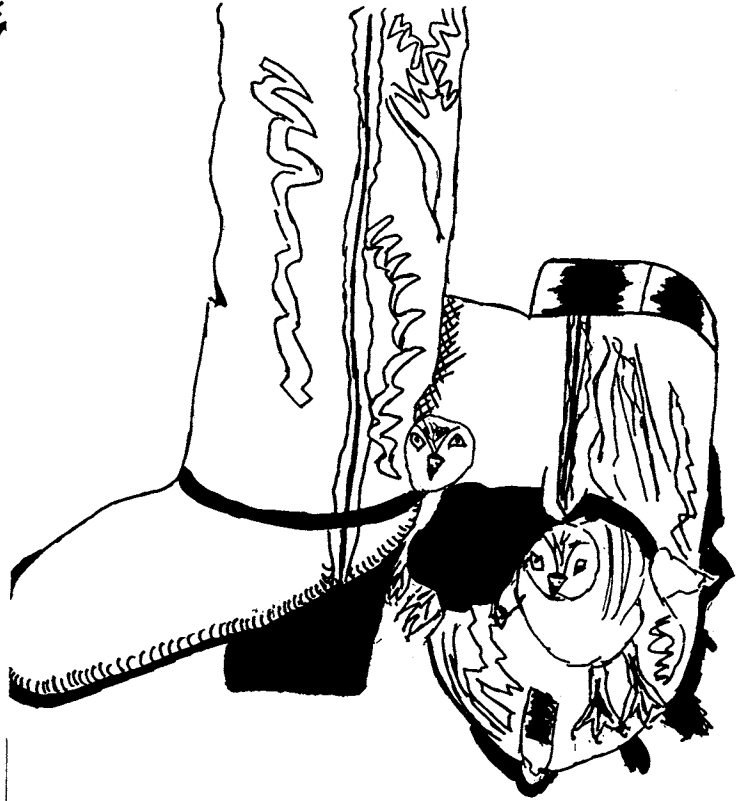
Air Emissions

- Chapter 101 General Rules
- Chapter 111 Control of Air Pollution from Visible Emissions and Particulate Matter

- Chapter 112 Control of Air Pollution from Sulfur Compounds
- Chapter 113 Control of Air Pollution from Toxic Materials
- Chapter 114 Control of Air Pollution from Motor Vehicles
- Chapter 115 Control of Air Pollution from Volatile Organic Compounds
- Chapter 116 Control of Air Pollution from Permits for New Construction or Modification
- Chapter 117 Control of Air Pollution from Nitrogen Compounds
- Chapter 118 Control of Air Pollution from Air Pollution Episodes
- Chapter 119 Control of Air Pollution from Carbon Monoxide
- Chapter 120 Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities
- Chapter 121 Control of Air Pollution from Municipal Solid Waste Facilities
- Chapter 122 Federal Operating Permits

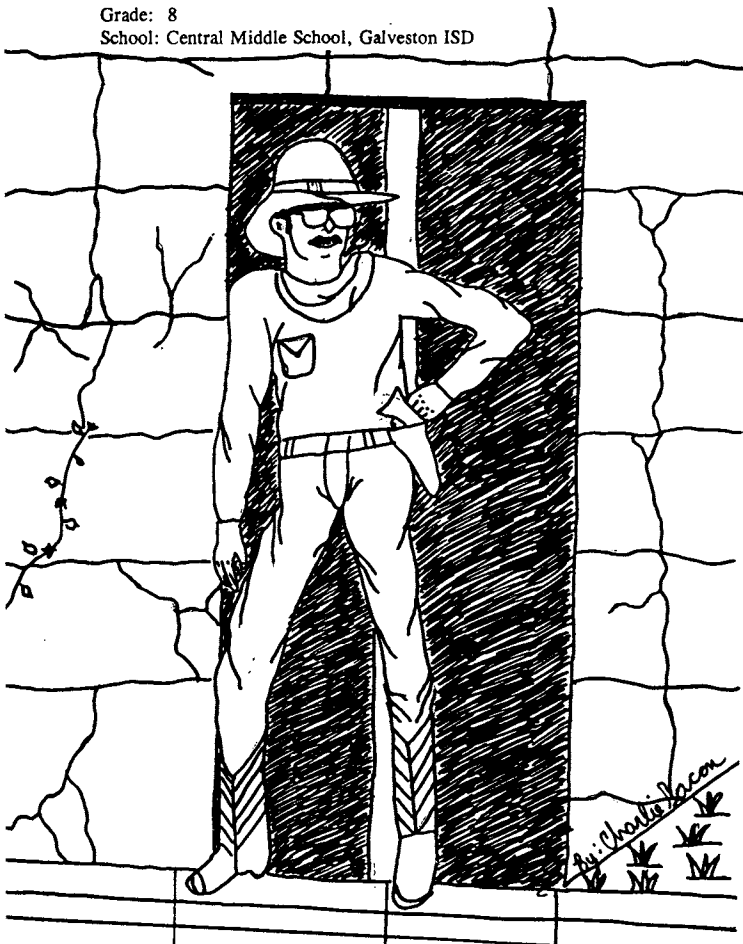


Name: James Robinson
 Grade: 7
 School: Central Middle School, Galveston ISD



Name: Eric Biggers
 Grade: 7
 School: Central Middle School, Galveston ISD

Name: Charlie Bacon
 Grade: 8
 School: Central Middle School, Galveston ISD



Name: Gilberto Dominguez
 Grade: 8
 School: Central Middle School, Galveston ISD

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Tuesday, May 7, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A prehearing conference will be held at the above date and time in SOAH Docket Number 473-96-0707-complaint of Elia Martin and Adelaida Arismendez against San Patricio Electric Cooperative, Inc. (PUC Docket Number 15089).

Contact: J. Kay Trostle, P.O. Box 13025, Austin, Texas 78711-3025, (512) 936-0728.

Filed: April 25, 1996, 9:16 a.m.

TRD-9605727



Texas Department of Agriculture

Thursday, May 2, 1996, 1:00 p.m. (Rescheduled from April 26, 1996, 9:00 a.m.)

300 West 15th Street, Suite 502

Austin

AGENDA:

Administrative hearing before an administrative law judge of the State office of administrative hearings in the matter of Texas Department of Agriculture vs. Ricky Adams to hear alleged violations of Texas Agriculture Code, Chapter 74, subchapter D, and the department's boll weevil eradication program regulations, SOAH Docket Number 551-96-0476.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 24, 1996, 3:00 p.m.

TRD-9605705

Tuesday, May 7, 1996, 7:30 p.m.

Snyder Chamber of Commerce, Chamber Board Room

Snyder

Scurry County Cotton Producers Board

AGENDA:

Discussion and action: Review minutes from previous meetings; review financial statements; discuss and set 1996 assessment; discuss Boll Weevil Eradication Funds.

Discussion: Other business, if needed.

Contact: Morris Light, 2600 34th Street, Snyder, Texas 79549, (915) 573-5762.

Filed: April 26, 1996, 11:03 a.m.

TRD-9605785



Texas Commission on Alcohol and Drug Abuse (TCADA)

Friday, May 17, 1996, 9:00 a.m.

911 Pegues Place, Woodbine Treatment Center

Longview

Regional Advisory Consortium (RAC), Region 4

AGENDA:

Call to order; introduction of visitors; reading and approval of minutes; TCADA update and comments; old business; new business; needs development: status of TCADA funding/allocation assignments; scheduling of committees and next meeting; additional discussion; and adjournment.

Contact: Perry Bridges, 3303 West Gentry Parkway, Tyler, Texas 75702, (903) 533-4259.

Filed: April 25, 1996, 10:51 a.m.

TRD-9605733

Friday, May 17, 1996, 9:00 a.m.

710 Brazos, Eighth Floor Conference Room

Austin

Multicultural Affairs Advisory Council

AGENDA:

Opening and welcome; review and approval of minutes; center for substance abuse prevention technical assistance visit update; nominating committee recommendations for officers; new membership criteria and recommendations; 1991 to present-where have we been and where are we going; and adjourn.

Contact: Carlene Philips, 710 Brazos, Austin, Texas 78701, (512) 867-8790.

Filed: April 25, 1996, 10:52 a.m.

TRD-9605734

◆ ◆ ◆
The State Bar of Texas

Monday, May 6, 1996, 11:30 a.m.

The Supreme Court of Texas, 201 West 14th Street (Courtroom)

Austin

Budget Committee

AGENDA:

Joint meeting of the Supreme Court of Texas and the State Bar of Texas to consider the proposed 1996-1997 annual budget of the State Bar of Texas.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78701, 1-800-204-2222.

Filed: April 26, 1996, 3:27 p.m.

TRD-9605835

◆ ◆ ◆
State Board of Barber Examiners

Tuesday, May 7, 1996, 9:00 a.m.

William P. Hobby State Office Building, 333 Guadalupe, Tower 2, Room 400-A

Austin

Board of Directors

AGENDA:

Opening of meeting; roll call; read and possibly approve minutes of February 6, 1996, March 11, 1996, March 25, 1996, and April 15, 1996 board meetings; old business: discussion and possible action regarding the inquiry made by the United States Department of Labor; discussion and possible action regarding an examination date for students at Clemons Prison; discussion and possible action regarding examination dates for the months of July 1996 through December 1996; discussion and possible action regarding board meeting dates for the months of July 1996 through December 1996; discussion and possible action regarding offering the manicurist exam in Spanish; discussion and possible action regarding the National Testing Service's decision to discontinue offering Spanish barber exams effective January 1, 1997; discussion and possible

action regarding the carrying of concealed weapons in the Barber Board's state office or at any Barber Board function; discussion and possible action regarding the 1997-2001 strategic planning sessions held in Midland, Dallas and San Antonio. Adjournment.

Contact: B. Michael Rice, 333 Guadalupe, Suite 2-110, Austin, Texas 78701, (512) 305-8475.

Filed: April 26, 1996, 4:19 p.m.

TRD-9605844

◆ ◆ ◆
Texas Boll Weevil Eradication Foundation

Monday, May 6, 1996, 8:00 a.m.

TBWEF Abilene Office, 3103 Oldham Lane

Abilene

AGENDA:

Call to order

Opening remarks and introductions

Discussion and action: review minutes; financial report; assessment regulations; referendum; executive director's report; TDA report; extension report.

Adjourn for executive session

Executive session: to consult with attorney in accordance with Texas Government Code Annotated, §551.071

Adjourn executive session-reconvene board meeting

Discussion and action: executive session; NCC report; APHIS report; chairman's report; next meeting time and place.

Discussion: other business

Adjourn

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212.

Filed: April 26, 1996, 10:07 a.m.

TRD-9605782

◆ ◆ ◆
The Daughters of the Republic of Texas, Inc.

Wednesday-Thursday, May 8-9, 1996, 8:30 a.m. and Friday-Saturday, May 10-11, 1996, 8:00 a.m. and 7:00 a.m., respectively.

The Arlington Hilton, 2401 East Lamar Boulevard

Arlington

Board of Management and 105th Annual Convention

AGENDA:

The Daughters of the Republic of Texas, Inc., exercising an over abundance of caution, hereby notice a portion of this Board of Management meeting as an open meeting under Texas Open Meetings Act with regard to all matters pertaining to state-owned properties which are under the management of control of D.R.T., Inc.

Wednesday, May 8, 1996, we start at 8:30 a.m. Closed session; Thursday, May 9, 1996-8:30 a.m. Reconvene-open session, determination of quorum, reports or discussion preview to reports of committees operating state owned properties which are under the management or control of D.R.T., Inc., Alamo Comm. QRT Library Committee, French Legation.

Closed/executive session-determination of quorum.

Convention agenda-Friday, May 10, 1996, 8:00 a.m. open meeting, Capitol Ball Room, Arlington Hilton Hotel, Arlington, Texas. Regarding state-owned properties. Recess-Noon-lunch. Reconvene 1:45 p.m. Open session. Closed session.

Saturday Agenda-8:00 a.m.-3:00 p.m. Closed session.

Adjourn

Contact: Mary Kathryn Briggs, 3711 Stillmeadow Drive, Bryan, Texas 77802, (409) 846-0871.

Filed: April 25, 1996, 8:20 a.m.

TRD-9605723



East Texas State University

Friday, May 3, 1996, 9:00 a.m.

East Texas State University, 2600 South Neal Street

Commerce

Revised Agenda

Board of Regents

AGENDA:

18. Resolution regarding Urban Tree Planting Program

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: April 29, 1996, 9:48 a.m.

TRD-9605869



Advisory Commission on State Emergency Communications

Monday, May 6, 1996, 10:00 a.m.

William P. Hobby Building, 333 Guadalupe Street, Tower II, Room 500

Austin

Executive Committee Meeting

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment; hear reports, discuss and take committee action, as necessary: interview applicants and make selection decision(s) on executive director position; recess: the committee will convene in executive session in accordance with Government Code, Chapter 551, Subchapter D, to interview and make selection decision(s) on the executive director position; reconvene: committee will discuss and report action resulting from executive session and possibly make selection decision(s) on executive director position. Adjourn.

For interpreter services for the hearing- and speech-impaired, please contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia S. Williams, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: April 26, 1996, 1:28 p.m.

TRD-9605815



State Employee Charitable Campaign

Friday, April 26, 1996, 2:00 p.m.

5400 Bosque, Central Tower

Waco

Local Employee Committee

AGENDA:

1. Review 1995 SECC
2. Overview of SECC roles and responsibilities
3. Review and select 1996 local campaign manager
4. Review and select 1996 local charitable organizations
5. Set next meeting date and agenda

Contact: Homer Trevino, 5400 Bosque, #225, Waco, Texas 76710, (817) 741-1980, Fax (817) 741-1984.

Filed: April 25, 1996, 1:20 p.m.

TRD-9605736

Monday, May 6, 1996, 3:00 p.m.

625 Dallas Drive, Suite 525

Denton

Local Employee Committee-Denton

AGENDA:

1. Review campaign progress
2. Develop and approve campaign plan
3. Review and approve campaign budget
4. Set next meeting date and agenda

Contact: Pat Gobble, 625 Dallas Drive, Suite 525, Denton, Texas 76205, (817) 566-5851, Fax (817) 898-8976.

Filed: April 26, 1996, 11:30 a.m.

TRD-9605790

Wednesday, May 8, 1996, Noon

1212 North Velasco

Angleton

Local Employee Committee-Brazoria County

AGENDA:

1. Review campaign projection
2. Discuss and set campaign goal
3. Set campaign budget
4. Discuss local campaign plan
5. Set next meeting date and agenda

Contact: Esther Bernard, 1212 North Velasco, Angleton, Texas 77516, (409) 849-9402, Fax (409) 848-0259.

Filed: April 26, 1996, 11:30 a.m.

TRD-9605791



General Land Office

Thursday, May 2, 1996, 8:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin
School Land Board
AGENDA:

Approval of previous board meeting minutes; consideration of amendment of terms and conditions for a special lease sale to be held on June 4, 1996; consideration of additional tracts for the special lease sale to be held on June 4, 1996.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: April 24, 1996, 4:16 p.m.

TRD-9605715

Friday, May 3, 1996, 9:30 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin
School Land Board
AGENDA:

Approval of previous board meeting minutes; consideration of amendment of terms and conditions for a special lease sale to be held on June 4, 1996; consideration of additional tracts for the special lease sale to be held on June 4, 1996.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: April 25, 1996, 4:13 p.m.

TRD-9605764

◆ ◆ ◆
Health and Human Services Commission

Tuesday, May 7, 1996, 1:00 p.m.

Texas Department of Health, Room M-652, 1100 West 49th Street
Austin

Hospital Payment Advisory Committee

AGENDA:

Opening comments; state Medicaid director's comments; approval of minutes, changes to Medicaid disproportionate share program rules to reflect state plan amendment; exceptions to 95-day filing deadline, Organ Transplant Diagnosis Related Group (DRG) reimbursement; reports: outpatient hospital reimbursement methodology, selective contacting report, disproportionate share hospital report state fiscal year 1996 and state fiscal year 1997; open discussion by members; next meeting/adjournment.

Contact: Sharon Dobbs, 4900 North Lamar Boulevard, Austin, Texas, (512) 424-6569.

Filed: April 26, 1996, 11:12 a.m.

TRD-9605787

Thursday, May 9, 1996, 9:15 a.m.

Texas Department of Human Services, 701 West 51st Street, Public Hearing Room

Austin

Medical Care Advisory Committee

AGENDA:

Opening comments; state Medicaid director's comments; approval of minutes; federal legislative update; Organ Transplant Diagnosis

Related Group (DRG) reimbursement; exceptions to 95-day filing deadline; changes to Medicaid disproportionate share program rules to reflect state plan amendment; Chapter 406, Subchapter D, ICF/MR reimbursement methodology, ICF/MR therapeutic rule; amendment to Medicaid nursing facility Preadmission Screening and Annual Resident Review (PASARR) rules amendment to the long term care nursing facility requirements for licensure and Medicaid certification regarding interest accrual on Medicaid civil money penalties; replacement value of excluded resource; reports: outpatient hospital reimbursement methodology, long term care integrated model, Hospital Payment Advisory Committee; open discussion by members; next meeting/adjournment

Contact: Sharon Dobbs, 4900 North Lamar Boulevard, Austin, Texas, (512) 424-6569.

Filed: April 26, 1996, 11:06 a.m.

TRD-9605786

◆ ◆ ◆
Texas Historical Commission

Thursday, May 2, 1996, 2:00 p.m.

Radisson Inn Amarillo Airport Hotel, Randall Room, 7909 I-40 East at Lakeside

Amarillo

Revised Agenda

Texas Antiquities Advisory Board

AGENDA:

Approval of minutes from January 25, 1996 TAC meeting #2. Designation of ten State Archeological Landmarks from Brewster County: John Collins Wax Camp, 41BS1003; Herrmann Ranch Number 2, 41BS1004; Herrmann Shelter, 41BS1005; Maravillas Shelter, 41BS1006; Resurrection Shelter, 41BS1007; Javelina's Home, 41BS1008; Stillwell Shelter, 41BS1009; and Hallie's Shelter, 41BS1010 and two designations from Montague County; 41MU60 and 41MU62 (both publicly owned portions only). Nomination of 15 State Archeological Landmarks. Two in Tom Green County: 41TG307 and 41TG309. Nine Applewhite project sites in Bexar County: 41BX653; 41BX661; 41BX662; 41bX675; 41BX832; 41BX833; and 41BX857. 41GR676 in Garza County, 41SM193 in Smith County, 41WA183 in Walker County and the Treue der Union (German for "True to the Union") Monument in Kendall County. The proposed adoption of amendments to Chapter 26. Approval of draft amendments to Chapter 26. Listen to any public comments and any staff reports.

Contact: Lillie Thompson, P.O. Box 12276, Austin, Texas 78711, (512) 463-1858.

Filed: April 24, 1996, 11:40 a.m.

TRD-9605688

◆ ◆ ◆
Texas Department of Human Services

Thursday, May 2, 1996, 10:00 a.m.

701 West 51st Street, Third Floor, Conference Room 305-E

Austin

Client Self-support Services Advisory Council

AGENDA:

I. Call to order. II. Approval of minutes of March 7, 1996, meeting. III. Chairman's comments. IV. Deputy commissioner comments. V. New business. A. Action items: Comments on the draft fiscal year

1997-2001 DHS Strategic Plan. Implementation of additional welfare reform policies in the AFDC, Food Stamp and Medical Programs. Proposed improvements in the CACFP: Risk Analysis. Proposal improvements in the CACFP: Administrative sanctions. Proposed improvements in the CACFP eligibility criteria and performance standards for private, nonprofit CACFP Day Care Home Sponsors. VI. Next meeting/adjournment.

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4147.

Filed: April 24, 1996, 3:49 p.m.

TRD-9605711

Friday, May 3, 1996, 10:00 a.m.

701 West 51st Street, John H. Winters Building, Fifth Floor, Conference Room 5W

Austin

Aged and Disabled Advisory Committee

AGENDA:

1. Opening comments. 2. Deputy commissioner's comments. 3. Approval of the minutes. Action items there will be no action items presented at this meeting. Information/technical items: 4. Replacement value of excluded resource. 5. Changes in the In-Home and Family Support Program (IHFSP) rule language. 6. Residential Care (RC) Program. 7. Amendment to the Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification regarding interest accrual on Medicaid Civil Money Penalties. 8. Amendment to Medicaid Nursing Facility Preadmission Screening and Annual Resident Review (PASARR) rules. Proceedings of the subcommittee on services to persons with disabilities. Proceedings of the Nursing Facility Subcommittee. 9. Open discussion by members. 10. Next meeting/adjournment.

Contact: Anthony Venza, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4943.

Filed: April 24, 1996, 3:00

TRD-9605706



Texas Department of Insurance

Monday, May 13, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0665.c

To consider whether disciplinary action should be taken against Albert Garza Lopez, Laredo, 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 29, 1996, 9:31 a.m.

TRD-9605852

Wednesday, May 15, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0691.c

To consider whether disciplinary action should be taken against Ernest Harred Kali-Bali, Sugar Land and Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 29, 1996, 9:31 a.m.

TRD-9605853

Thursday, May 16, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0664.c

To consider whether disciplinary action should be taken against Gilson Joseph Viator, Port Arthur and Bridge City, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, a Variable Contract Agent's License, and a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 29, 1996, 9:31 a.m.

TRD-9605854

Thursday, May 16, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0692.c

To consider whether disciplinary action should be taken against Kenneth W. Wainscott, Austin, 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 29, 1996, 9:31 a.m.

TRD-9605855



Texas Department of Licensing and Regulation

Tuesday, May 7, 1996, 9:00 a.m. (Rescheduled from: March 21, 1996)

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

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, Robert Groce Dill, for failure to

pay public monies, to the State Treasury per times and as prescribed by law in violation of 16 Texas Administrative Code (TAC) §67.101(3), in accordance with the Texas Civil Statutes, Articles 8700 (the Act) and 9100; the Texas Government Code, Chapter 2001 (APA); and 16 TAC Chapter 67.

Contact: Paula Hamje, E.O. Thompson Building, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 26, 1996, 2:30 p.m.

TRD-9605824

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Texas State Board of Medical Examiners, Texas State Board of Acupuncture Examiners

Friday, April 26, 1996, 10:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Emergency Revised Agenda

Examination, Licensure and Fee Committee

AGENDA:

In addition to previously posted agenda, the committee will review the application of Guoen Wang

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, (512) 305-7016, Fax (512) 305-7008.

Filed: April 25, 1996, 1:31 p.m.

TRD-9605737

◆ ◆ ◆

Texas Natural Resource Conservation Commission

Thursday, May 2, 1996, 10:00 a.m. and 1:00 p.m.

Room 201S, Building E, 12118 North Interstate 35

Austin

Revised Agenda

AGENDA:

The commission will consider approving the following matters on the agenda: Class 2 modification to hazardous waste permit; hearing request; on-site sewage investigation; municipal waste discharge enforcement; industrial hazardous waste enforcement; rules; motion for reconsideration; 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 10:00 a.m. agenda starts 9:30 a.m. until 9:55 a.m.)

The commission will consider administrative law judge's proposal for decision at 1:00 p.m. (Registration for 1:00 p.m. agenda starts at 12:30 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 24, 1996, 4:18 p.m.

TRD-9605716

Wednesday, May 8, 1996, 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12118 North Interstate 35

Austin

AGENDA:

The commission will consider approving the following matters on the agenda: Class 2 modification to hazardous waste permits; hearing request; air enforcement matters; public water supply 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.)

The commission will consider administrative law judge's proposal for decision at 1:00 p.m. The commission will also consider a motion for rehearing. (Registration for 1:00 p.m. agenda starts at 12:30 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 26, 1996, 3:05 p.m.

TRD-9605827

Thursday, May 9, 1996, 10:00 a.m.

Conrad Blucher Institute, Texas A&M University-Corpus Christi, 6300 Ocean Drive

Corpus Christi

Policy/Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

Joint Policy/Management Committee meeting

I. Call to order/introduction/minutes

II. Discussion/approval of preliminary plan

III. Discussion/approval of year one implementation funding strategy

IV. Additional items/adjourn

Management Committee regular meeting

I. Call to order/introductions/approval of minutes

II. Program update

III. Discussion/approval of final fiscal year 1997 work plan

IV. Discussion/approval of final fiscal year 1997 scopes of work

V. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: April 29, 1996, 9:41 a.m.

TRD-9605863

Wednesday, May 29, 1996, 9:30 a.m.

Room 201S of Building E, 12118 North IH-35, TNRCC Park 35 Office Complex

Austin

AGENDA:

TNRCC Docket Number 96-0511-DIS; petition for dissolution of North Grand Prairie Flood Control District (the "District") submitted

under the authority of §§49.321-49.327 and §§54.734-54.738 of the Texas Water Code, 30 Texas Administrative Code, §§293.131-293.136 and under the procedural rules of the commission. The District was created on June 18, 1987 by the legislature. The petition for dissolution of the District states dissolution of the District is desirable as the District was created for the purposes of reclaiming land but has never adopted a plan of reclamation, and will not in the future. The petition further states that the District has been financially dormant for five consecutive years prior to this request for dissolution, the District has performed no functions during this time period, and has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, shall escheat to the State of Texas and shall be administered by the State Treasurer and disposed of in the manner provided by Texas Civil Statutes, Article 3270a, 1925, as amended.

Contact: Gloria A. Vasquez, Mail Code 152, P.O. Box 13087, Austin, Texas 78711, (512) 239-6161.

Filed: April 29, 1996, 7:59 a.m.

TRD-9605846

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Texas State Board of Examiners of Perfusionists

Monday, May 6, 1996, 6:00 p.m.

Capitol Area of Perfusionist, #J-3, 5524 Bee Caves Road
Austin

AGENDA:

The board will discuss and possibly act on: approval of the minutes from the March 1, 1996 meeting; chairman's report; director's report; program director's report; executive secretary's report concerning processing of applications; utilization of the American Board of Cardiovascular Perfusion examination for Texas licensure; requirements of continuing education; Licensed Perfusionists Act, Vernon's Texas Civil Statutes, Article 4529e, 22 Texas Administrative Code; and setting of next meeting date.

Contact: Jo Whittenberg, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6751. 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: April 24, 1996, 4:27 p.m.

TRD-9605717

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Texas State Board of Pharmacy

Tuesday-Wednesday, May 7-8, 1996, 9:00 a.m.

333 Guadalupe Street, Suite 2-225

Austin

Board Business Meeting

AGENDA:

The board will commence in open session to: (1) consider for approval the February 6, 1996, board business meeting minutes; (2) consider for proposal amendments to §281.26 concerning definition of diversion; (3) receive updates and reports on financial status; TSBP office move; efficiencies due to relocation; implementation of lockbox for license renewals; TSBP computer applications conversion; recent and upcoming conferences and events; Health Professions Council; active/pending complaints; (4) discuss the NABPLEX

examination; centralized receipt of prescriptions; procedures pertaining to patient counseling; letters to the Board concerning patient counseling; requirement for a pharmacist to notify a patient prior to obtaining permission from a physician to dispense a different drug product; appointment of a Task Force to review public health and safety impact of contractual arrangements for pharmaceutical services between third party payors; Pew Health Professions Commission report; Mexican drugs; (5) review and consider for approval fiscal years 1997-2001 strategic plan; fiscal years 1998-1999 biennium budget; fiscal years 1998-1999 proposed budgets; proposal of amendments to §§291.31-291.33 concerning duties of pharmacists, delegation of duties to pharmacy technicians, and use of automated technology to dispense prescriptions; discuss the draft of Medical Board rules and consider proposal of new rule §295.13 to implement Senate Bill 659 regarding drug therapy management by pharmacists; fiscal year 1997 calendar of events; fiscal year 1995 annual report; (6) receive presentation by Bob Dufor, R.Ph., WalMart Stores, Inc.; (7) Executive session to consider personnel matters, agreed board orders, and possible litigation; (8) Board member/staff recognition of appointments and awards; (9) discuss items to be placed on agenda for the August Board meeting.

Contact: Gay Dodson, R.Ph., William P. Hobby Building, Suite 3-600, 333 Guadalupe, Box 21, Austin, Texas 78701-3942, (512) 305-8027, Fax (512) 305-8075.

Filed: April 25, 1996, 3:58 p.m.

TRD-9605763

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Texas State Board of Examiners of Psychologists

Friday, May 10, 1996, 8:30 a.m.

333 Guadalupe, Suite 2-400A

Austin

Psychological Associate Advisory Committee

AGENDA:

The Psychological Associate Advisory Committee to the Texas State Board of Examiners of Psychologists will meet to consider public comments, minutes of the last meeting; rules; reports from the chair of the committee, the acting executive director of the agency and the general counsel of the agency; reports from the following subcommittees: Disciplinary Sanctions, Financial Advisory, Legislative, Legal Issues, Policies and Procedures, Public Information and Relations, Professional/Ethical Standards and Development, Professional Reimbursement Guidelines, Publications and Research, and Supervisory Guidelines; planning for the next Advisory Committee meeting; and to seek legal advice in executive session pursuant to Title 5, Chapter 551, Government Code, §551.071.

Contact: Jennifer Noack, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

Filed: April 25, 1996, 4:14 p.m.

TRD-9605765

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Public Utility Commission of Texas

Friday, May 3, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been rescheduled for the above date and time in Docket Number 15133-application of Northeast Texas Electric Cooperative, Inc., Tex-La Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and their ten member distribution cooperatives for authority to implement industrial competitive rates.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 26, 1996, 12:09 p.m.

TRD-9605797

Tuesday, May 7, 1996, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been rescheduled for the above date and time in Docket Number 15395-application of Houston Lighting and Power Company for approval of experimental real time pricing tariffs for commercial and industrial customers.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 26, 1996, 2:39 p.m.

TRD-9605825



Stephen F. Austin State University

Monday, April 29, 1996, 1:30 p.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

AGENDA:

I. Open session-Committee of the Whole

II. Executive session

A. Report of pending litigation

1. Bakewell v. SFA, et al

2. Parrish v. SFA, et al

3. Ginn v. SFA, et al

4. Weber v. NAH, Inc. et al

5. State of Texas v. LUDCO

6. Montalvo v. Caldwell, et al

7. Bennett v. SFA, et al

8. Coleman v. SFA, et al

B. Personnel matters regarding specific University employees

1. President

2. General counsel

3. Basketball coach

C. Real estate

III. Open discussion of Tuesday board items

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas

75962-6078, (409) 468-2201.

Filed: April 24, 1996, 2:32 p.m.

TRD-9605703

Tuesday, April 30, 1996, 9:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

AGENDA:

I. Executive session

A. Report on pending litigation

B. Personnel matters regarding specific University employees

1. President

2. General counsel

3. Basketball coach

C. Real estate

II. Approval of January 30, 1996 minutes

III. Election of board officers

IV. Administration

A. Election of president

B. Election of general counsel

V. Personnel

A. Faculty and staff appointments for Spring 1996

B. Faculty and staff appointments for 1996-1997

C. Changes in status

D. Promotions

E. Tenure

F. Regents professorships for 1996-1997

G. Faculty development leave

H. Retirements

I. Voluntary modification of employment

VI. Academic and Student Affairs

A. Faculty workload report

B. Underenrolled class report for Spring, 1996

C. Acceptance of general bulletin

D. Top Ten Scholarship Program

E. Doctor of Education Degree in Educational Leadership

F. Room and board rates

G. Student information kiosks

VII. Financial Affairs

A. Revision of Investment Policy

B. Budget changes-reporting items less than \$50,000

VIII. Buildings and Grounds

A. Amendment to Coordinating Board approval-utility loop

B. Authorization of project substitution-HEAF funds

C. Subcontractor bids on music building construction and renovation

D. Roof repair bids

E. Construction manager for Austin building renovation, utility loop project and human sciences elevator project

F. Feed mill installation

IX. Reports

A. Chair, Faculty Senate

B. Vice President, Student Government Association

C. Vice President for University Advancement

D. President

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: April 24, 1996, 3:40 p.m.

TRD-9605710

Tuesday, April 30, 1996, 9:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Revised Agenda

Board of Regents

AGENDA:

In addition to the previously filed agenda, the following item has been added:

VII. Financial Affairs

C. Approval to solicit bids for purchase of three interactive video systems

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: April 25, 1996, 1:58 p.m.

TRD-9605739



The Texas A&M University System, Board of Regents

Monday, April 29, 1996, 10:00 a.m.

200 Crescent Court, Suite 1065

Dallas

Board Bylaws Committee

AGENDA:

The purpose of this meeting is to discuss, review and adopt revisions to the Bylaws of the Board of Regents of the Texas A&M University System.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: April 25, 1996, 2:31 p.m.

TRD-9605747



The Texas State University System

Wednesday-Friday, May 1-3, 1996, 4:00 p.m. (Wednesday) and 9:00 a.m. (Thursday and Friday)

Wednesday: The Landing Conference Center, Aquarena Springs, Southwest Texas State University

Thursday and Friday: 11th Floor Conference Room, J. C. Kellam Building, Southwest Texas State University

San Marcos

Board of Regents

AGENDA:

Review of matters of the Board and the Universities in the System including: all matters of curriculum; all matters of construction projects and documents for the Universities in the System; financial matters of the System Office and the Universities in the System; minority issues, including consideration of adoption of a TSUS Historically Underutilized Business Policy; personnel actions including new employees, reemployment of existing employees, promotions, resignations, retirements, terminations, tenure, emeritus status, resolutions of honor, commissioning of police officers, salaries/salary supplements and special appointment or interim appointment of any system employee including staff, faculty, Presidents and the Chancellor (including, but not limited to, the scheduled annual evaluation of Presidents); discussion of litigation; bond sales, budgetary changes, operating budgets and contract approvals for each university and the system administration; review of amendments to the TSUS Rules and Regulations and consideration of the recommendation of the Sam Houston State University Presidential Search Committee. (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: April 25, 1996, 9:31 a.m.

TRD-9605730



The University of Texas System

Wednesday-Thursday, May 8-9, 1996, 9:30 a.m.

Wednesday: Empress Room, The Wyndham Warwick, 5701 Main Street

Thursday: Room 1505C and 1726, Doctors Center, U.T. Health Science Center, 7000 Fannin

Houston

Board of Regents and Standing Committee

AGENDA:

To consider finalist candidates for Presidency of U.T. M.D. Anderson Cancer Center; chancellor's docket (submitted by system administration); amendments to regents' rules and regulations; matters related to the University of Texas Investment Management Company (UTIMCO); U.T. Arlington and U.T. Dallas: report on revised role and mission statements; U.T. Austin-Building Revenue Refunding Bonds, Series 1986; proposed delegation of contract approval authority; medical, dental, health maintenance organization, and vision insurance rates; degree programs; buildings and grounds matters including approval of preliminary plans, appropriations, approval of new projects and approval of building plaques; real estate matters, and personnel matters as detailed on the complete agenda.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: April 29, 1996, 9:08 a.m.

TRD-9605850



Texas Workforce Commission, Texas Commission for National and Community Services

Sunday, May 19, 1996, 2:00 p.m.

Conference Room B, Hotel Galvez, 2024 Seawall Boulevard
Galveston

AGENDA:

Approval of minutes; board committee reports; strategic planning and organizational structure review.

Meeting continued to Monday, May 20, 1996.

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 Christine Shakespeare at (512) 475-2583 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: C. Kingsbery Otto, 101 East 15th Street, Austin, Texas 78778, (512) 475-1119.

Filed: April 26, 1996, 4:07 p.m.

TRD-9605842

Monday, May 20, 1996, 9:15 a.m.

Physical Education Facility, Room 107, Texas A&M at Galveston
Galveston

AGENDA:

State of the Commission; organization structure and planning issues; lunch break; Seaborne Conservation Corps site visits; 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 Christine Shakespeare at (512) 475-2583 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: C. Kingsbery Otto, 101 East 15th Street, Austin, Texas 78778, (512) 475-1119.

Filed: April 26, 1996, 4:07 p.m.

TRD-9605843

Regional Meetings

Meetings Filed April 24, 1996

The Brazos Valley MHMR Authority Board of Trustees met at 200 South Texas Avenue (Maxwell Center), Bryan, April 30, 1996, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77802, (409) 822-6467. TRD-9605678.

The Education Service Center, Region III Board of Directors met at 1905 Leary Lane, Victoria, May 1, 1996, at 2:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9605708.

The Texas Council Risk Management Fund Executive Committee met at the Austin Wyndham Hotel, Poolside Room, 4140 Governor's Row, Austin, May 1, 1996, at 7:30 p.m. Information may be obtained from Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9605681.

The Texas Council Risk Management Fund Board of Trustees and Advisory Committee Training met at the Wyndham Austin Hotel, Sweetwaters Room, 4140 Governor's Row, Austin, May 2, 1996, at 8:00 a.m. Information may be obtained from Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9605681.

The Texas Council Risk Management Fund Underwriting Committee met at the Austin Wyndham Hotel, Sweetwaters Room, 4140 Governor's Row, Austin, May 2, 1996, at 7:00 p.m. Information may be obtained from Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9605683.

The Texas Council Risk Management Fund Claims and Loss Control Committee met at the Austin Wyndham Hotel, Sweetwaters Room, 4140 Governor's Row, Austin, May 2, 1996, at 7:00 p.m. Information may be obtained from Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9605684.

The Texas Council Risk Management Fund Budget and Finance Committee met at the Austin Wyndham Hotel, Poolside Room, 4140 Governor's Row, Austin, May 2, 1996, at 7:30 p.m. Information may be obtained from Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9605685.

The Texas Council Risk Management Fund Board of Trustees and Advisory Committee Meeting will meet at the Wyndham Austin Hotel, Sweetwaters Room, 4140 Governor's Row, Austin, May 3, 1996, at 8:00 a.m. Information may be obtained from Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers, Westpark Building 3, Suite 240, 8140 Mopac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9605686.

The Shackelford Water Supply Corporation Director's Meeting met at the Fort Griffin Restaurant, Albany, May 1, 1996, at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (817) 345-6858 or (915) 762-2575. TRD-9605712.

The South Texas Private Industry Council, Incorporated (Emergency Meeting.) met at 901 Kennedy Street, Zapata, April 25, 1996, at 4:00 p.m. (Reason for emergency: Approval of the CY Title IIB plan.) Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (210) 722-0546. TRD-9605702.

The West Central Texas Municipal Water District Board of Directors met at 410 Hickory, Abilene, May 1, 1996, at 9:45 a.m. Information may be obtained from Michele R. Sanders, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254. TRD-9605695.

Meetings Filed April 25, 1996

The Alamo Area Council of Governments Rural Area Judges met at the St. Anthony Hotel, San Antonio, April 29, 1996, at Noon. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9605740.

The Bell-Milam-Falls WSC Board met at FM 485 West, Cameron, May 2, 1996, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9605726.

The Central Texas Economic Development District Executive Committee will meet at the Parks Buffet Restaurant, 4318 Bellmead

Drive, Waco, May 9, 1996, at 11:00 a.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (817) 799-0258. TRD-9605731.

The Dallas Central Appraisal District Board of Directors' Public Hearing met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, May 1, 1996, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9605724.

The Dallas Central Appraisal District Board of Directors' Regular Meeting met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, May 1, 1996, at 7:30 a.m.-immediately following public hearing. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9605725.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, May 1, 1996, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9605748.

The East Texas Council of Governments JTPA Board of Directors met at 1306 Houston Street, Kilgore, May 1, 1996, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9605766.

The Erath County Appraisal District Appraisal Review Board will meet at 1390 Harbin Drive, Stephenville, May 7, 1996, at 9:00 a.m. Information may be obtained from Mitzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9605735.

The Toledo Bend Project Joint Operating Board met at the Texas Damsite Office, Route 1 Box 270, Burkeville, May 2, 1996, at 10:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9605738.



Meetings Filed April 26, 1996

The Austin Transportation Study US 290-Loop 1 Task Force and Charge #2 Working Group Meeting met at the Acapulco's Restaurante Y Cantina, 6705 West Highway 290, Austin, May 1, 1996, at Noon. Information may be obtained from Michael R. Aulick, P.O. Box 1088-Annex, Austin, Texas 78767, (512) 499-2275. TRD-9605776.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors-Called Meeting met at 1124A Regal Row, Austin, April 29, 1996, at 11:00 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-9605784.

The Creedmoor Maha Water Corporation Monthly Board Meeting met at 1699 Laws Road, Buda, May 1, 1996, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 248-2113. TRD-9605768.

The Dallas Area Rapid Transit DART Hispanic Briefing met in Conference Room "C"-First Floor, 1401 Pacific Avenue, Dallas, April 29, 1996, at 5:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9605834.

The East Texas Council of Governments Private Industry Council met at 3800 Stone Road, Kilgore, May 2, 1996, at 9:30 a.m.

Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9605792.

The East Texas Council of Governments Executive Committee met at 352 South Glenwood, Tyler, May 2, 1996, at 12:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9605781.

The Heart of Texas Region MHMR Center Board of Trustees met at 110 South 12th Street, Waco, April 30, 1996, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9605793.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization met at the TxDOT District Office, 600 West Expressway US 83, April 29, 1996, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas, (210) 682-3481. TRD-9605833.

The Middle Rio Grande Valley Development Council Middle Rio Grande Development Council Executive Committee met in the Central Office Conference Room, 307 West Nopal Street, Carrizo Springs, May 2, 1996, at 2:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9605845.

The Sabine River Authority Board of Directors will meet at the Fredonia Hotel, 200 Fredonia Street, Nacogdoches, May 3, 1996, at 10:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9605783.

The TML Group Benefits Risk Pool Board of Trustees met at the San Diego Princess Resort, 1404 West Vacation Road, San Diego, California, May 2, 1996, at 8:00 a.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, (512) 719-6521. TRD-9605826.



Meetings Filed April 29, 1996

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, May 2, 1996, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9605848.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite #100, Austin, May 8, 1996, at Noon. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite #100, Austin, Texas 78704, (512) 443-7653. TRD-9605851.

The Henderson County Appraisal District Appraisal Review Board met at 1751 Enterprise Street, Athens, May 2, 1996, at 9:00 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9605862.

The Wood County Appraisal District Appraisal Review Board will meet at 210 Clark Street, Quitman, May 3, 1996, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9605856.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Cotton Stalk Destruction Administrative Penalty Guideline

The Texas Agriculture Code (the "Code"), §12.020, confers administrative authority upon the department to assess administrative penalties against a person who violates provisions of Chapter 74 of the Code or a rule adopted pursuant to this chapter. The department has adopted this penalty guideline to ensure that its administrative enforcement actions are fair, uniform, consistent, and appropriate. The penalty matrix as published in the August 5, 1994, issue of the *Texas Register* (19 TexReg 6141) is being amended to allow greater flexibility in assessing a more appropriate penalty based on four factors.

The four factors considered when assessing administrative penalties are: (1) the fruiting status of the cotton plant; (2) the number of days that a field has been out of compliance; (3) the number of acres out of compliance; and (4) the effort of the cotton producer to comply with the destruction deadline. The department believes that the factors listed are important when assessing an administrative penalty. Since boll weevil and pink bollworm development occurs inside fruiting structures, the department considers a field which has cotton plants with fruit to be more hazardous than a field which does not contain fruit. Additionally, the longer a field is left undestroyed and the

more acres that are not in compliance, the greater the impact on the number of boll weevils and pink bollworms entering diapause.

COTTON PENALTY FORMULA

In order to assess penalties for failure to destroy cotton stalks or other host plants by the appropriate destruction deadline, the following penalty formula should be used: Add the total number of acres out of compliance to the number of days the field is out of compliance. Multiply the sum by a compliance factor of \$5.00. The product is the adjustable penalty. The total penalty is the sum of the base penalty and the adjustable penalty.

Calculating the number of days a field is out of compliance will be based on the status of the cotton plant that is found in the field. In zones requiring the shredding and plowing of cotton stalks, the beginning date for calculating the days of non-compliance for volunteer cotton plants will be the date of the department's initial inspection. If the cotton plant is regrowth, shredded or standing stalks, the beginning date for calculating the days of non-compliance will be the day after the destruction deadline date. In zones requiring the shredding or plowing of cotton stalks, the beginning date for calculating the days of non-compliance will be the date of the initial inspection for volunteer or regrowth, or the day after the destruction deadline date for standing stalks.

The base penalty is determined by the following chart:

The department may reduce the penalty to the extent that the cotton producer brings a portion of the total acreage into compliance after the initial inspection. If the cotton producer utilized herbicide to comply with destruction requirements, the total penalty may be reduced up to 50%.

If the cotton producer had a previous administrative penalty assessed against him, the adjustable penalty will be increased by 50%.

Additional reductions in the penalty may be allowed for extenuating circumstances as justice requires.

This penalty guideline is effective immediately upon publication.

Issued in Austin, Texas, on April 25, 1996.

TRD-9605746 Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture

Filed: April 25, 1996

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Office of the Attorney General
Texas Solid Waste Disposal Act
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Prior to entry of a judgment in an enforcement action brought under the Texas Solid Waste Disposal Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicated the consent is inappropriate, improper, inadequate, or inconsistent with the requirement of the Texas Solid Waste Disposal Act.

Case Title and Court: State of Texas v. Chemicals, Inc., Cause Number 96-04575 in the 353rd District Court of Travis County, Texas.

Nature of the Settlement: The State of Texas proposes to settle its enforcement action against Chemicals, Inc. Chemicals, Inc. owns and operates a specialty chemical manufacturing facility in Baytown, Texas. The lawsuit addresses past operating violations and the investigation and remediation of possible contaminated soils at the facility.

Proposed Agreed Judgment: The State proposes to enter into an Agreed Final Judgment that contains provisions for injunctive relief, civil penalties, and attorneys' fees, as follows:

Injunctive Relief: The judgment requires Chemicals, Inc. Texas City Terminal Railway to investigate the nature and extent of contamination, if any, at its facility, and, based on the results of the investigation, to carry out any necessary remedial measures.

Civil penalties: The judgment requires the Defendant to pay \$50,000 in civil penalties to the State.

Attorneys' Fees: The judgment requires the Defendant to pay \$20,000 in attorneys' fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Nancy E. Olinger, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, fax (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas on April 29, 1996.

TRD-9605867 Suzanne Marshall
Special Assistant Attorney General
Office of the Attorney General

Filed: April 29, 1996

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Texas Department of Criminal Justice
Invitation to Bid

The Texas Department of Criminal Justice, Parole Division, invites bids for the Sex Offender Treatment Services Program which will be operated by State Parole officials, to provide assistance to those participants identified by the Texas Department of Criminal Justice, Parole Division, as sex offenders and who are supervised by the Texas Department of Criminal Justice, Parole Division. These treatment services will be needed in select sites statewide. The program goals of the Texas Department of Criminal Justice, Parole Division, are to subsidize the treatment costs for group therapy and evaluations for those participants requiring financial assistance, in order to facilitate availability of treatment, prevent recidivism, and retain qualified treatment providers. Bids will be evaluated in accordance with Vernon's Texas Civil Statutes, Article 601B, State Purchasing and General Services Commission adopted rules, and compliance with the Terms, Conditions, and Specifications of this Invitation For Bids. The Texas Department of Criminal Justice, Parole Division, will not be bound to act by any previous communication with Bidders, other than this Invitation For Bids, Commission Rules, and State Law. The Texas Department of Criminal Justice Parole Division, shall be the sole judge of "the interest of the Parole Division."

As provided by statute, awards will be based on the lowest and best bids most advantageous to the Texas Department of Criminal Justice, Parole Division, as determined by consideration of service rates offered, quality, general reputation, performance capabilities of the Bidders, services as related to past performance, terms and conditions of this Invitation For Bids. It is the Texas Department of Criminal Justice, Parole Division's, intent to enter into a contract about August 1, 1996, for one year with the option to renew the contract.

This is a competitive bid contract.

The closing date for receipt of offers is June 10, 1996, 5:00 p.m. Bid opening date is June 11, 1996, 9:00 a.m. at 8712 Shoal Creek Boulevard, Suite 270-A, Austin, Texas 78757.

The contact person for requesting Bid packets is Larry Nunn, Texas Department of Criminal Justice, Parole Division, Purchasing Section, 8712 Shoal Creek Boulevard, Suite 270-A, Austin, Texas 78757, (512) 459-9406. The Bid packet and mailing instructions must be obtained from

the Texas Department of Criminal Justice, Parole Division and signed by the prospective provider.

The contact person for inquiries regarding treatment program requirements is Patti Dobbe, Texas Department of Criminal Justice, Parole Division, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5302.

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

TRD-9605847 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed: April 29, 1996

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Texas Engineering Experiment Station

Request for Qualifications

The Texas Engineering Experiment Station (TEES), a part of The Texas A&M University System, announces the issuance of a Request for Qualifications (RFQ) for the purpose of subcontracting with energy metering contractors to participate in the metering and monitoring portion of the LoanSTAR program for 1996. The LoanSTAR (Loans to Save Taxes and Resources) program is an energy conservation and retrofit program for State agencies, schools and municipal governments.

Contact: Parties interested in submitting a qualifications statement should contact Kim Howard, Energy Systems Laboratory, WERC 214H, Texas A&M University, College Station, Texas 77843, (409) 862-3919, FAX (409) 862-2457 to obtain a complete copy of the RFQ.

Closing date: Qualifications statements must be received in the Energy Systems Lab no later than 2:00 p.m. (CST), on May 20, 1996. Qualifications statements received after this time and date will not be considered.

Award Procedure: All qualifications statements will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFQ. The committee will determine which organization(s) best meet the criteria and will make the final decision. A company submitting a qualifications statement may be asked to clarify it's qualifications, which may include an oral presentation prior to the final decision. TEES reserves the right to accept or reject any or all qualifications statements submitted. TEES is under no legal or other obligation to execute contracts on the basis of this notice or the distribution of an RFQ. Neither this notice, nor the RFQ commits TEES to pay for any costs incurred prior to the execution of any contracts.

Issued in College Station, Texas, on April 19, 1996.

TRD-9605788 Vickie Running
Secretary of the Board of Regents
Texas Engineering Experiment Station

Filed: April 26, 1996

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Texas Department of Health

Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued January 5, 1996, to Travis M. Hausler, D.D.S., 4721 Sierra Madre, El Paso, Texas 79904, holder of Certificate of Registration Number R09554.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on April 25, 1996.

TRD-9605729 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: April 25, 1996

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Proposal for Funding Local WIC Agency Beginning in Federal Fiscal Year 1997

The Texas Department of Health, Bureau of Nutrition Service's Special Nutrition Program for Women, Infants and Children (WIC) is proposing a revised funding formula to be used in calculating payments for its contracted local agencies (LAs) beginning with federal FY 1997 (October 1, 1996-September 30, 1997).

This funding formula represents a collaborative effort of the Bureau of Nutrition Services and members of the Texas Association of Local WIC Director's (TALWD) Funding Committee. The goal of the formula's development has been to devise a more objective methodology for the allocation of available program funds to WIC contractors than the existing sliding scales provided.

The Bureau of Nutrition Services believes that the factors identified by the funding formula workgroup meet that goal by providing objective criteria on which to base a warranted variation in reimbursement amounts to WIC LAs. Of course, the move to a revised funding methodology must be a gradual one. The proposal incorporates a "hold harmless" feature guaranteeing that LAs earnings in future years, will at least equal the dollars earned under their sliding scales during the period of April 1995-March 1996 combined with the amount of actual special initiative payments made to them in federal FY 1995. LAs must serve at least as many participants in FY 1997 and future years as they served in FY 1996. This "hold harmless" feature assures a gradual move toward full implementation of the new funding formula, which may require several years.

A draft of this formula was presented to WIC LA directors during the Bureau of Nutrition Service's annual WIC directors meeting held in San Antonio, Texas on April 8-9, 1996, which included a panel discussion followed by a question and answer session. Please submit any comments you may have about this proposed funding formula, in writing, to the Texas Department of Health, Bureau of Nutrition Services, 1100 West 49th Street, Austin, Texas 78756, not later than the close of business on May 24, 1996. All comments received in the Bureau of Nutrition Services by that date will be reviewed and considered.

Definition of terms within this proposal:

Administrative grant per person (AGP)—base grant per person that USDA provides to the State of Texas for every participant USDA calculates the food grant will serve.

Certification—process by which applicants are determined eligible for WIC benefits.

Competent professional authority (CPA)—an individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods.

Food grant—funding provided by the USDA to the Texas Department of Health WIC Program. Such funds can be used only to pay grocers and pharmacies for WIC food items dispensed.

FY—Federal fiscal year. October 1–September 30.

Hold harmless—guaranteed level of administrative funds available to a WIC Local Agency comprised of that LA's total sliding scale earnings for the period April 1995–March 1996 plus that LA's actual expenditures for Special Initiative in FY 1995.

LA—Local agency. Contracted not-for-profit agency that provides WIC program services.

LVN—Licensed Vocational Nurse

Nutrition services and administration grant (NSA)—funding provided by the USDA to the Texas Department of Health WIC Program that pays for all costs other than food, including State Agency expenditures and all costs associated with Local Agency operations.

Participant—means pregnant women, breastfeeding women, postpartum women, infants, and children who are receiving supplemental foods or food instruments under the Program, and the breastfed infants of participant breastfeeding women.

Participation—the actual number of WIC participants issued food benefits by a WIC LA during a given month plus the number of totally breastfed infants served.

R. D.—Registered Dietitian.

Sliding scale—methodology currently being used by the Texas Department of Health WIC Program to pay its contracted local agencies. Eight separate sliding scales were used for funding purposes to recognize the differences in cost between types of LAs and locale. Each scale consisted of four activity bands that provided a decreasing earnings per person for a LA as actual participation increased. For example, the first 500 people served in a month received a high reimbursement to cover fixed costs; the next 1,000 people served that month received a lesser earnings per person; the next 8,500 people earned a smaller amount per person; and all additional participants served by the LA during the month were paid at yet a smaller amount per person.

Special initiative (SI)—name given by the Texas Department of Health's WIC Program for funding intended to cover additional staff and other resources needed to provide immunizations in a WIC setting and/or for WIC expansion.

Special projects—any WIC related activity performed by a LA outside the customary functions of screening, certifying clients, issuing food benefits, or delivering nutrition education.

State agency (SA)—Texas Department of Health, Bureau of Nutrition Services, also known as the WIC Program.

TALWD—Texas Association of Local WIC Directors.

USDA—United States Department of Agriculture

WIC—Special Supplemental Nutrition Program for Women, Infants and Children.

PROPOSED FUNDING FORMULA

The new funding formula is based on a base rate per person applied to all participation. The base rate will be adjusted for each LA according to four factors that affect

the cost of providing WIC services and that are beyond the control of the LA. Although this method changes how a LA's earnings are determined, earnings continue to follow actual program activity. Reimbursement to LAs can never exceed actual expenditures for allowable WIC costs.

Basis For Determining Amount To Be Included in Formula:

Each year, the Texas Department of Health (TDH) receives two grants from the United States Department of Agriculture (USDA) to administer the WIC Program. One grant can be used only to pay for the food benefits received by participants (Food Grant), and the second grant is used for all other costs of the WIC Program including State and LA operations. The latter grant is called the Nutrition Services and Administration Grant (NSA). Within the limits of this grant, TDH is required to spend a minimum of one-sixth for costs and activities defined as nutrition education. TDH is also required to spend an amount equal to \$21 for each pregnant and breastfeeding woman participant for breastfeeding promotion and support activities.

The amount TDH receives in the NSA grant is based directly on the number of participants that USDA calculates can be served with the food grant. The concept is referred to in the USDA national funding formula as an administrative grant per person (AGP). While TDH is not required to spend exactly the same percent of the food and the NSA grant, the two must track relatively closely. The administrative cost per person is monitored by USDA, and cannot exceed the administrative grant per person by more than 15%.

The same administrative grant per person concept is used in the proposed LA funding formula. Since LA contracts must be finalized before the national formula is run, the first step is to estimate the amount the SA will receive in the following year's NSA grant. The next step is to determine the amount necessary to maintain required SA operations, and any set-aside for special projects. The remaining amount is divided by the total annual participation funded by the food grant. The result is the monthly administrative grant per person available as the base for the LA formula, (the phrase base rate per person will be used so as not to confuse the reader).

Components of New Funding Formula

A. Base Rate Per Person. The formula starts with the same base rate per person for all LAs. This is based on the premise that the operational requirements for all LAs are the same, and that the majority of the differences in costs between LAs are the result of controllable management decisions on how to administer the program.

B. Adjustment Factors. The formula recognizes that there are some factors beyond management control that affect the cost of operation. Four adjustment factors are significant enough to be considered in the formula. Each of the factors is defined so that only those LAs with significant cost differences in that area qualify. Any given LA may receive an adjustment for one or more of the four factors. Whether an LA's final rate is more or less than the base rate will depend on the combined effects of the four factors. The four factors will be adjusted annually as new data becomes available.

Since the formula operates with a fixed amount of funds, the combined financial effect of the adjustment factors must be as close to neutral as possible. Some factors are weighted more heavily than others, because they have a

greater impact on cost variability. The levels at which factors take effect were based largely on scatter diagrams of LA characteristics that identified natural "break points." In some cases, it was necessary to adjust cut-off points up or down to keep the overall number of dollars allocated through a factor at the level needed to balance the overall formula. All factors were divided into three ranges; one receiving a positive factor, one receiving a negative factor, and one receiving the base rate without an adjustment.

The four adjustment factors are as follows:

Population Density—This factor adds an amount equal to 20% of the base rate for those LAs in which 51% or more of the counties served are defined as very rural (population density of less than 50 people per square mile). It reduces funding by an amount equal to 10% of the base rate for LAs in which 51% or more of the counties served are defined as very densely populated (population density of more than 500 people per square mile). LAs in which 51% or more of the counties have a population density of 50 through 500 will not receive this adjustment factor. LAs serving two counties will not receive the factor unless both counties met the criteria. Population density, or the number of people per square mile, will be determined by dividing the population by the land area of each county as determined by the U.S. census bureau as of January 1991 (source 1994-1995 Texas Almanac, page 152).

It is inherently more expensive to serve a given size population spread over a wide area than it is to serve the same size population in a small area. More sites, each serving fewer participants, may be needed to avoid excessive travel costs for participants. Costs for items such as staff travel time and mileage, and long distance telephone charges, are greater. In contrast, sites located in very densely populated areas can achieve cost savings by maximizing efficiency in use of staff time and site space.

For multi-county LAs that have only a few very rural counties, the additional costs in these counties can be offset by more moderate costs in other counties. It is only when a majority of counties are very rural that additional funding is needed. For multi-county LAs that serve only a few very urban areas, the cost efficiencies achieved in these counties do not offset higher costs in other counties. It is only when a majority of an LA's counties are very densely populated that cost efficiencies are great enough to warrant decreasing overall administrative funding per participant.

On a percentage basis, the negative adjustment for very densely populated areas is smaller than the positive adjustment for very rural areas. However, densely populated counties tend to have higher WIC participation. Since the adjustment is applied to a much larger number of participants, the overall effect of the negative adjustment is greater in real dollars than the positive adjustment. Thirty-five LAs will receive a positive adjustment on this factor; 17 will receive a negative adjustment; and the remaining 28 will not receive an adjustment.

Salaries—This factor gives a positive adjustment equal to 5.0% of the rate for those LAs in which 51% or more of their counties have high average weekly salaries. It gives a negative adjustment equal to 5.0% of the base rate for those LAs in which 51% or more of the counties have low average weekly salaries. For purposes of this factor, high salaries are defined as greater than \$450 per week. Low salaries are defined as less than \$325 per week.

The factor is based on prevailing wages in the area, not the salary schedule of the LA or the WIC Program. Average weekly salaries are determined from the 1994-1995 Texas Almanac. The Texas Almanac uses figures provided by the Texas Employment Commission for fourth quarter of 1991 through the third quarter of 1992. A scatter diagram of county wage rates was used to determine natural "break points" for the \$325 and \$450 levels that are used. Reliable, accurate, county-specific information on wage rates by profession are not available. While the mix of staff used in a WIC site may not correspond exactly with the types of jobs used by the Employment Commission to determine prevailing wages in a county, this is the best source of data available.

This factor does not attempt to account for salary differences based on the type and mix of staff used in an LA; for example, whether an LA uses R.D.'s or LVN's as competent professional authorities. It does not attempt to account for LA policies regarding merit or longevity salary increases. These are examples of decisions within management control, either at the WIC Program or LA level. The factor only accounts for significant differences in the prevailing salaries for a nurse, clerk, or nutritionist in one part of the state compared to a nurse, clerk, or nutritionist in another part of the state.

The percentage adjustment is the same for both positive and negative adjustments. Higher and lower prevailing wage rates may occur in areas with large WIC participation or small participation. Nineteen LAs will receive a positive adjustment on this factor; 17 will receive a negative adjustment; and the remaining 44 will not receive an adjustment.

Site Equivalents—This factor adds funding for LAs that operate a large number of sites, and decreases funding for LAs that have very few sites. LAs that have more than ten site equivalents will receive a positive adjustment equal to 10% of the base rate. LAs having only one site equivalent or less will receive a negative adjustment equal to 10% of the base rate.

A site equivalent is defined as a site reporting a minimum of 20 working hours per week, with sites in operation for more than 40 hours per week still considered one site equivalent. Sites open less than 20 hours per week are counted as one-half site equivalent. Working hours are defined as those hours during which WIC services are provided. Hours in which an office is open only for the purpose of answering telephones lines, without staff providing services to WIC participants such as certification, issuance of food vouchers, or nutrition education, are not considered working hours.

This factor recognizes that cost efficiencies occur in LAs having very few sites. The most efficient use of staff and other resources occurs in an LA with one full-time site. However, one site may not provide adequate access for the population in an area. As additional sites are added, the administrative cost increases. More resources are required to distribute supplies and materials to multiple sites, and to maintain effective communication with staff. Supervisory resources also become more stretched. As the first few additional sites in an LA's service area are opened, the additional cost can be absorbed in the base rate for the additional participants. As a higher number of sites are opened, improving access to participants, the additional costs surpass the base rate generated by the additional participants.

On a percentage basis, the site equivalent adjustment is the same for both positive and negative adjustments. Single-site LAs exist in both urban (high population density) and rural (low population density) areas. Multiple-site LAs also exist in both urban and rural areas. Consequently, both positive and negative adjustments may apply to LAs with either large or relatively small participation. Fifteen LAs will receive a positive adjustment on this factor; 13 will receive a negative adjustment; and the remaining 52 will not receive an adjustment.

Participation Level—This factor takes into account the cost efficiencies associated with serving large numbers of participants, and the cost inefficiency associated with serving a very small level of participation. Each LA has certain administrative and fixed costs regardless of the number of people served. These costs are amortized over the entire level of participation. For very small LAs this increases the cost per person significantly. For very large LAs, this has a lesser effect. A positive adjustment equal to 15% of the base rate will be made for those LAs with monthly participation of 3,000 or less. A negative adjustment equal to 10% of the base rate will be made for LAs with monthly participant of 15,001 or more. No adjustment will be made for LAs with participation between 3,001 and 15,000. Participation used for this factor is the average of actual participation reported by the LAs for January, February, and March of the most recent year.

On a percentage basis, the negative adjustment for very large LAs is smaller than the positive adjustment for very small LAs. However, since the adjustment is applied to a much larger number of participants, the overall effect of the negative adjustment is greater in real dollars than the positive adjustment is.

Implementation of the New Funding Formula

The Funding Task Force proposes a gradual transition to the new funding formula. This will assure that LAs have the funds to continue to serve their current participants. It will also assure adequate funding for LAs to continue current expansion efforts, if funding is available for expansion.

FY 1997 Funding

The Funding Committee recommends the following method for funding LAs for federal fiscal year 1997 (October 1, 1996-September 30, 1997). The SA will apply two methods for earning funds for FY 1997. To determine earnings for each LA for FY 1997, refer to Chart A—Draft FY 1997.

Funding Method #1—FY 1997

A single cost per participant was determined for each LA (column #13). For FY 1997, this cost per participant will be applied to all participation up to the number of participants served for the period of April 1995-March 1996. The cost per participant was calculated as follows:

1. The amount earned by each LA during the period of April 1996-March 1997 was computed from their sliding scale(s) in operation during that period (column #7).
2. The actual amount billed for Special Initiative for FY 1995 (October 1, 1994-September 30, 1995) was added to the earnings on the sliding scale. This amount includes all funds paid to LAs regardless of the amount paid to the SA from TDH-Immunization Division.
3. These two amounts were added to set a "hold harmless" amount for each LA (column #12). "Hold harmless"

means that no LA will earn less than this amount for FY 1997, provided they serve at least the number of participants shown in column #7 and continue to provide immunizations through the WIC Special Initiative. If an LA stops providing immunizations through the Special Initiative, their hold harmless amount will be reduced by the amount of their FY 1995 Special Initiative expenditures. Column #13 shows the cost per participant, based on the hold harmless amount (column #12 divided by column #7).

Funding Method #2—FY 1997

LAs whose cost per participant in column #13 exceeds that which they will receive under the new funding method (column #6), will be reimbursed according to the new funding method, after their participation exceeds the number in column #7.

The SA will calculate a base rate per participant, based on projected funding available for LAs for FY 1997. The charts A and B show this amount in the upper left of the page. The amount has been tentatively set at \$7.04. For each LA, the base rate per participant has been adjusted for the four factors (population densities, average salary costs by county (staffing), number of sites (SE), and size (participation level)) described previously. Column #6 shows the adjusted base rate per participant for each LA.

NOTE: The relative value of each factor and cutoff points for making adjustments to the base for each factor have been tentatively set and are shown on the chart. The cutoff points for making adjustments and the percentage of adjustment for each factor are still open for comment. Any changes made as a result of comments received could affect the adjusted base for an LA.

Most LAs will have two amounts in their FY 1997 contracts to specify their earnings. The SA will reimburse LAs the amount shown in column #13, for each participant up to the participation number shown in column #7. Once participation exceeds the amount in column #7, the SA will pay the LA the amount in column #6 for the remainder of participants served in FY 1997. In addition, once the number of immunizations given in FY 1997 exceeds the number given in FY 1995 (column #9), the LA will also be paid the cost per immunization being paid by the TDH-Immunization Division to WIC.

If additional funds are available for LAs, the funds will be distributed as follows:

1. If an LAs cost per participant using funding method #1 (column #13) is less than that determined using the new funding method #2 (column #6), these LAs will receive the cost per participant in column #13, plus a proportional share of any new funding that is available for LAs in FY 1997, not to exceed the amount in column #6. This will move them closer to the funding they will receive when we fully implement the new funding method.
2. Agency's that are funded for an entire fiscal year using the new funding method (method #2), will also receive reimbursement for each immunization given through the WIC Special Initiative. The reimbursement will be the same amount that the TDH-Immunization Division is paying the WIC Program to cover the cost of giving immunizations as part of the Special Initiative.

Beginning in FY 1997, the SA will fund new LAs with the new funding method. New LAs will also receive funds, to cover costs of opening a new LA that may not be covered by their contract earnings. These special funds will be

available only during the first six months of operation. To receive such funds, a new LA must receive approval of a budget request made to the SA, outlining the costs for which they will need start-up funds. New LAs will also receive the cost per immunization amount that the TDH-Immunization Division pays to WIC for immunizations given through the Special Initiative.

FY 1998 and Subsequent Years' Funding

Funding for FY 1998 and subsequent years will be determined as follows:

The hold harmless amount in column 12 will be divided by the total participation for the most recent April-March. For example, in FY 1998, the participation that would be divided into the hold harmless amount would be for the

period April 1996-March 1997. This will give a new cost per participant in column #13. LAs will be funded at this new cost per participant until they reach the number served for the previous April-March. After they have reached that participation level, they will be funded using the new funding method #2 described previously. For an example of how earnings for FY 1998 and subsequent years will be determined, refer to Chart B-Draft FY 1998.

The SA may set aside funds each year for LA special requests. LAs will submit these requests as a proposal, early in the fiscal year, or possibly before the fiscal year starts. The proposals will be evaluated by objective criteria established by a committee of SA and LA staff. Proposals must be in accordance with the year's priorities.

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

TRD-9605873 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: April 29, 1996

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**Texas Higher Education Coordinating
Board**

Award of Consultant Contract

Under the provisions of Texas Government Code, Chapter 2254, Subchapter B, the Texas Higher Education Coordinating Board announces the award of a contract to provide consulting services as described in the Request for Proposals (RFP) that was published in the March 19, 1996, issue of the *Texas Register* (21 TexReg 2316). The consultant will conduct a study by utilizing focus groups to analyze the feasibility and advisability of defining and establishing regional areas of principal responsibility for health professions education offered by public institutions of higher education in Texas.

The consultant is MGT of America, Inc., 710 Lavaca, Suite 710, Austin, Texas, 78701. Greg Hartman will be Partner-in-Charge for the study. In accordance with applicable provisions, Mr. Hartman has notified the Coordinating Board that he was previously employed by the Office of Comptroller of Public Accounts from January 1991 to November 1995 as State Comptroller John Sharp's Executive Assistant and as Director of Communications for the agency. He managed the Communications Division and oversaw a number of projects and policy initiatives begun in that office, and terminated with an annual rate of compensation of \$72,000.

The total value of this contract is \$28,000. The contract began on April 22, 1996 and will terminate upon the Coordinating Board's acceptance of the final report on July 8, 1996.

Issued in Austin, Texas, on April 23, 1996.

TRD-9605732 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Filed: April 25, 1996

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Texas Department of Human Services

Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following program: Supplemental Payment For Ventilator Dependent Nursing Facility Residents Requiring Less Than Continuous Ventilation. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursements for medical assistance programs. The public hearing will be held on May 21, 1996 at 8:30 a.m. in the Fifth Floor West Tower Conference Room of the John H. Winters Center (701 West 51st Street, Austin, Texas, Fifth Floor, West Tower, Room 560W). If you are unable to attend the hearing, but wish to comment on the reimbursements, written comments will be accepted if

received by 5:00 p.m. on the day of the hearing. Please address written comments to the attention of Sonya Battle. Written comments may be mailed to the address noted as follows, delivered to the receptionist in the lobby of the John H. Winters Center, or faxed to (512) 438-3014. Interested parties may request to have mailed to them or pick up a briefing package concerning the proposed reimbursements on or after May 7, 1996 by contacting Sonya Battle, M/C W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sonya Battle (512) 438-4817 by May 15, 1996 so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605831 Glenn Scott
General Counsel
Texas Department of Human Services

Filed: April 26, 1996

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Texas Department of Insurance
Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for a name change in Texas for Firemark Insurance Company, a foreign fire and casualty company. The proposed new name is Allmerica Financial Benefit Insurance Company. The home office is in Valley Forge, Pennsylvania.

Application for a name change in Texas for Mirus Insurance Company, a foreign fire and casualty company. The proposed new name is UniCARE Life and Health Insurance Company. The home office is in Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

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

TRD-9605865 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 29, 1996

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**Notice of Application by Block Vision
of Texas, Inc., Dallas, Texas for
Issuance of a Certificate of Authority
to Establish and Operate an HMO in
the State of Texas**

Notice is given to the public of the application of Block Vision of Texas, Inc., Dallas, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) for the sole purpose of providing a single health care service plan offering a vision care service in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at

the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to Block Vision of Texas, Inc., without a public hearing.

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

TRD-9605866 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: April 29, 1996

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed enforcement order was entered regarding BELL PROCESSING, INC., Docket Number 96-0427-MSW-E (Permit Number MSW 1827) on April 17, 1996 assessing \$8,798 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carol Piza, Enforcement Coordinator, at (512) 239-6729 or Steve Shepherd, Staff Attorney, at (512) 239-0464, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding VERNON EDWARD HANCOCK, Docket Number 96-0441-PST-E (TNRCC Facility Number 28963, Enforcement ID E11007) on April 17, 1996 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Linda G. Sorrells, Staff Attorney, at (512) 239-3408 or Mick Wilson, Enforcement Coordinator, at (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding the CITY OF SAN SABA, Docket Number 95-1166-PWS-E (PWS Number 2060001, CCN Number 10468) on April 17, 1996 assessing \$6,961 in administrative penalties with the entire amount deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-6259 or Sabelyn Pussman, Enforcement Coordinator, at (512) 239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding DEBBIE OKUN BLOCK AND MELVIN BLOCK DOING BUSINESS AS COMMUNITY WATER SYSTEMS, Docket Number 96-0081-PWS-E (PWS Numbers 1810018, 1810021, 1810023, 1810024, 1810025, 1810034, 1810062, 1810069, 1810070, 1810071, 1810081 and 1810083; CCN Number 11438) on April 17, 1996 assessing \$700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sabelyn Pussman, Enforcement Coordinator, at (512) 239-6061 or Guy Henry, Staff Attorney, at (512) 239-6259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding GENERAL MAGNETIC COMPANY, Docket Number 96-0399-IHW-E (SWR Number 52200) on April 17, 1996 assessing \$49,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peter Gregg, Staff Attorney, at (512) 239-0450 or Lila Beckley, Enforcement Coordinator, at (512) 239-2130, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An enforcement order was entered regarding MAGNUM CORPORATION, Docket Number 95-0903-PST-E, (TNRCC Owner ID Number 13003, Enforcement ID E10592) on April 17, 1996 assessing \$14,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney at (512) 239-0477 or Karen Berryman, Enforcement Coordinator, at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605818 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 26, 1996

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Notice of Applications for Waste Disposal Permits for the Week Ending Period of April 22-26, 1996

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing;" (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

AIR PRODUCTS, INCORPORATED, 10202 Strang Road, LaPorte, Texas 77572; a hydrogen gas purification plant; the plant is on the east side of Battleground Road, approximately 1.75 miles north of the intersection of Battleground Road and State Highway 225 in the City of LaPorte, Harris County, Texas; renewal; 02177.

CLAYTON, WILLIAMS and SHERWOOD, INC., 800 Newport Center Drive, Suite 400, Newport, California 92660; the wastewater treatment facilities are at 4000 Ace Lane in the City of Lewisville approximately 1.2 miles south and 0.1 mile west of the intersection of FM Road 3040 and a gravel road known as Ace Lane, and approximately 1.4 miles west and 1.2 miles south of the intersection of FM Road 3040 and State Highway 121 in Denton County, Texas; renewal; 13043-01.

CITY OF EDINBURG, P.O. Box 1079, Edinburg, Texas 78540; the Edinburg Wastewater Treatment Facilities are northeast of the City of Edinburg immediately northeast of the intersection of North "M" Road and Southern Union Pacific Railroad tracks in Hidalgo County, Texas; amendment; 10503-02.

CITY OF EMORY, P.O. Box 100, Emory, Texas 75440; the water treatment facilities are at Freebridge Road, approximately 2,000 feet west of Freebridge Road and one mile south of FM Road 35 in the City of East Tawakoni in Rains County, Texas; amendment; 10082-02.

CITY OF HOUSTON, P.O. Box 262549, Houston, Texas 77207-2549; the 69th Street Wastewater Treatment Plant is at 2525 South Sgt. Macario Garcia on the north bank of Buffalo Bayou in the City of Houston in Harris County, Texas. The Northside Wet Weather Facility will be located on the north bank of Buffalo Bayou at the Lockwood bridge crossing of Buffalo Bayou in the City of Houston, in Harris County, Texas; amendment; 10495-090.

NORTHWESTERN STEEL AND WIRE COMPANY, 1755 Federal Road, Houston, Texas 77015; a hot forming carbon steel section mill plant; the plant site is at 1755 Federal Road, approximately 0.1 miles south of the intersection of Federal Road and Interstate Highway 10 in the City of Houston in Harris County, Texas; amendment; 03272.

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.

CITY OF WELLMAN, P.O. Box 124, Wellman, Texas 79378-0124; the wastewater treatment facilities are approximately 0.25 mile north and 1.2 miles east of the City of Wellman in Terry County, Texas; amendment; 13642-01.

STERLING CHEMICALS, INC., 201 Bay Street South, Texas City, Texas 77592; authorizes subsurface disposal of hazardous and non-hazardous wastes generated by the permittee's facility during the manufacture of petrochemicals. The amendment will omit the EPA hazardous waste codes because the Commission is no longer incorporating EPA no-migration conditions into the permits; The facility is located at 201 Bay Street South, approximately 3.5

miles east of the intersection of IH 45 and FM 1764 in Texas City, Galveston County, Texas; renew and amendment; Permit Numbers WDW-91 and WDW-196; 45-day notice.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605820 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 26, 1996

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Notice of Commission Action for the
Week Ending April 26, 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, (512) 239-3300.

Petition of Pablo Gonzalez appealing the New Connection Fee of Talty Water Supply, CCN Number 10850; TNRCC Docket Number 96-0045-UCR; SOAH Docket Number 582-96-0142 (Application Number 31002-X).

Lake Water Companies for a Water Rate Increase; TNRCC Docket Number 95-1148-UCR; SOAH Docket Number 582-95-1103; CCN Number 11523; 10974; 10822 (Application Number 30869-R).

1464 Corporation doing business as Hidden Lakes for a rate increase; TNRCC Docket Number 96-0025-UCR; SOAH Docket Number 582-96-1646; Application Number 30992-G).

Malone Water System for a rate increase; TNRCC Docket Number 95-1537-UCR; SOAH Docket Number 582-95-1641; CCN Number 12534; (Application Number 30932-G).

Phelps Water Supply Corporation for an amendment to certificate of convenience and necessity; TNRCC Docket Number 96-0030-UCR; SOAH Docket Number 582-95-1643; CCN Number 10129; (Application Number 30950-C).

Rancho del Lago, Inc. to transfer service areas and amend certificates of convenience and necessity; TNRCC Docket Number 95-1352-UCR; SOAH Docket Number 582-95-1622; CCN Numbers 12745 and 10692; (Applications Numbers 30791-S, 30792-S, 30793-S, 30794-S and 30795-C).

Northridge Acres Homeowners Asso to acquire Northridge Acres WSC facilities and transfer CCN; TNRCC Docket Number 96-0206-UCR; SOAH Docket Number 582-96-0441; CCN Number 12493; (Application Number 31012-S).

Windsor Water Company rate tariff change; TNRCC Docket Number 96-0144-UCR; SOAH Docket Number 582-96-0380; CCN Number 11281; (Application Number 30968-G).

Order Nunc Pro Tunc to correct Commission Order issued January 29, 1996, concerning the application by Clayton Trent doing business as Trent Water Works for a rate tariff change; TNRCC Docket Number 95-1259-UCR; SOAH

Docket Number 582-95-1624; CCN Number 11050 (Application Number W-30904-R).

Issued in Austin, Texas, on April 26, 1996.

TRD-9605817

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 26, 1996

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**Notice of Opportunity to Comment on
Permitting Actions for the Week
Ending April 26, 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 (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing"; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Consideration of the application of Maverick Loft, Inc. doing business as Hays Water Company to Acquire Facilities and Transfer Water CCN Number 11874 from Hays Water Company in Hays County, Texas. (Application #31050-S, Vera Poe).

SIGNATURE OF A PROPOSED ORDER APPROVING AN APPLICATION BY CIRCLE C MUNICIPAL UTILITY DISTRICT NUMBER 4 OF TRAVIS COUNTY FOR AMENDMENT OF AN ORDER DATED MARCH 8, 1996 AUTHORIZING THE ISSUANCE OF \$2,460,000 IN BONDS. The District's application requests approval of an amendment to the order to allow for comments on the bond issue by the county commissioners court. (TNRCC Internal Control Number 040596-D02, Randy Nelson).

SIGNATURE OF A PROPOSED ORDER APPROVING AN APPLICATION BY CIRCLE C MUNICIPAL UTILITY DISTRICT NUMBER 3 OF TRAVIS COUNTY FOR AMENDMENT OF AN ORDER DATED DECEMBER 8, 1995 AUTHORIZING THE ISSUANCE OF \$2,750,000 IN BONDS. The District's application requests approval of an amendment to the order to allow for comments on the bond issue by the county commissioners court. (TNRCC Internal Control Number 040596-D01, Randy Nelson).

Signature of a Proposed Order Approving the Application by Harris County Municipal Utility District Number 346 for Approval of \$2,500,000 Unlimited Tax Bonds, Second Issue, 7.19% Net Effective Interest Rate, Series 1996. The District's application requests Commission approval of a bond issue to finance the District's pro rata share of construction of Phase I and II of the joint water plant, wastewater conveyance line, and to purchase wastewater capacity in the Green Trails MUD plant. (TNRCC Internal Control Number 012296-D02; Randy Nelson).

CITY OF FORT WORTH for a minor amendment to Permit Number 10494-013 to authorize the marketing and the distribution of sludge. The proposed amendment also authorizes the permittee to utilize the City-owned dedicated sludge disposal (DLD) site for turf grass farming until such time as the site is utilized as an active DLD site. The permit currently authorizes the discharge of treated domestic wastewater effluent at a final volume not to exceed an average of 144,000,000 gallons per day, which will remain the same. The Village Creek Wastewater Treatment plant is southeast of the confluence of the West Fork Trinity River with Village Creek in Fort Worth, Tarrant County, Texas.

Application Number 23-812C by the Hidalgo and Cameron Counties Irrigation District Number 9 for a Texas Water Code, §11.122 Water Use Permit Application. Amendment to Certificate Number 23-812 to change purpose and place of use authorized of 3,000 acre-feet of Class "A" irrigation water rights to municipal use within the applicant's service area. Rio Grande, Rio Grande Basin, Hidalgo and Cameron Counties, Texas. (Kellye Rila).

Issued in Austin, Texas, on April 26, 1996.

TRD-9605819

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 26, 1996

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Notice of Public Hearings

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 regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct public hearings to receive testimony regarding revisions to 30 TAC Chapter 114 and to the SIP.

The purpose of the proposed new sections and corresponding SIP revision is to implement Senate Bill 200 (SB 200), Acts of the 74th Texas Legislature, 1995, pertaining to the

alternative fuels program; House Bill 734 (HB 734), Acts of the 72nd Texas Legislature, 1991, pertaining to the operations and functions of certain mass transit authorities; the 1990 Federal Clean Air Act as amended, Acts of the 101st U.S. Congress, pertaining to provisions for attainment and maintenance of health protective national ambient air quality standards; and for other purposes.

The commission has proposed to implement the provisions of SB 200 in phases. Phase I contains requirements for the serious and above ozone and carbon monoxide non-attainment areas for local government and private fleets, and requirements for all non-attainment areas for mass transit authorities. Phase I includes local government and private fleets in the Houston/Galveston and El Paso areas, and mass transit authorities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston/Galveston non-attainment areas. Proposed new §§114.30, 114.32-114.34, and 114.36-114.40, pertaining to requirements for private and local government fleets in the Houston/Galveston and El Paso areas, will constitute the revision to the SIP. Proposed new §114.35 implements HB 734, which requires the commission to adopt rules for certification of exceptions for a mass transit authority confirmed at a tax election before July 1, 1985, and in which the principal city has a population of less than 750,000, according to the most recent federal census.

Public hearings on these proposals will be held on June 3, 1996 at 1:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; June 3, 1996 at 7:00 p.m. at the City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston; June 4, 1996 at 11:00 a.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; June 4, 1996 at 7:00 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; and June 5, 1996 at 2:00 p.m. at the Texas Natural Resource Conservation Commission Complex, Building F, Room 2210, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; 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 should be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 95153-114-AI. Comments must be received by 5:00 p.m., June 5, 1996. For further information, please contact Hazel Barbour, Mobile Source Division, (512) 239-1440.

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 April 24, 1996.

TRD-9605690 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: April 24, 1996

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 regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 115 and to the SIP, concerning the control of air pollution from volatile organic compounds (VOCs).

The proposed revision to §115.214, concerning Inspection Requirements, would remove the requirement to comply with the fugitive emissions monitoring requirements of §§115.352-115.357 and 115.359, and substitute a requirement for an audio-visual-olfactory (AVO) walkthrough monitoring program for control of equipment leaks at gasoline terminals. The proposed revision to §115.216, concerning Monitoring and Recordkeeping Requirements, would replace the reporting and recordkeeping requirements applicable to §§115.352-115.357 and 115.359 with reporting and recordkeeping requirements for an AVO program. These proposed revisions were developed in response to a petition for rulemaking. The proposed amendment to §115.616, concerning Recordkeeping and Reporting Requirements, would allow manufacturers of regulated consumer products to provide information on product containers or packages that enables determination of the applicable VOC limitation for the product as an alternative to the current requirement that each consumer product container or package display the date of manufacture, or a code indicating that date.

A public hearing on this proposal will be held in Austin on May 28, 1996 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. 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 the hearing and will answer questions before and after the hearing.

Written comments should be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Numbers 96117-115-AI and 96120-115-AI. Comments must be received by 5:00 p.m. June 7, 1996. For further information, please contact Mike Magee, Air Policy and Regulations Division, (512) 239-1511 or Ann Hammer, Air Policy and Regulations Division, (512) 239-6255.

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 April 24, 1996.

TRD-9605691 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: April 24, 1996



Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued during the period of April 26, 1996.

Application Number TA-7665 by Central Energy Producing Company for diversion of one acre-foot in a one year period for mining (oil well drilling) use. Water may be diverted from the Clear Fork Brazos River, approximately 19 miles east of Anson, Jones County, Texas, Brazos River Basin. Consent letter provided by landowner.

Application Number TA-7666 by ENRE Corporation for diversion of ten acre-feet in a six month period for industrial use. Water may be diverted from Denton Creek at the FM 2449 crossing, which is approximately 11.0 miles WSW of Denton, Denton County, Texas and four miles west of Ponder, Texas, Trinity River.

Application Number TA-7667 by Albert Pruski for diversion of ten acre-feet in a one year period for irrigation use. Water may be diverted from the stream crossing of County Road 225, approximately 19 miles southeast of Floresville, Wilson County, Texas, San Antonio River Basin.

Application Number TA-7668 by City of Arlington for diversion of six acre-feet in a 3-month period for recreational use. Water may be diverted from the Highway 157 crossing of the Trinity River, approximately 12 miles east of Fort Worth, Tarrant County, Texas, Trinity River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78731, (512) 239-3300.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605816
Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: April 26, 1996

Public Hearing Notice

Notice is hereby given that pursuant to the requirement of the Texas Government Code, Subchapter B, Chapter 2001,

the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning Chapter 216, Subchapter A, new §§216.1-216.11, concerning water quality protection zones.

The purpose of the proposed new subchapter is to implement Senate Bill 1017, enacted by the 74th Legislature, which added §26.179 to the Texas Water Code. These rules will set out the procedures and criteria to be used by the commission in the review and approval of water quality plans and amendments submitted for tracts of land designated as water quality protection zones; the approval of requests to designate water quality protection zones for tracts of land that are less than 1,000 acres but not less than 500 acres in size; the determination of the adequacy of annual reports to be submitted for water quality protection zones; and the assessment of fees.

A public hearing on the proposal will be held on June 4, 1996, at 2:00 p.m. in TNRCC Building E, Room 201S, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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 the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lutrecia B. Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-5687, with original written copy mailed to confirm faxed comments. All comments should reference Rule Log Number 95147-216-WT. Comments must be received by 5:00 p.m., June 7, 1996. For further information, please contact Arthur Talley, P.E., Non-Point Source Program, Watershed Assessment and Planning Section, Water Planning and Assessment Division, at (512) 239-4546.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

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

TRD-9605868
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: April 29, 1996

North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1213). The consultant will conduct a transit on-board survey for the Fort Worth Transportation Authority. This survey of fixed routes will focus on the data needed for operational decisions in transit planning and scheduling.

The consultant selected for this project is NuStats International, 4544 South Lamar Boulevard, Building 200, Austin, Texas 78745. The maximum amount of this contract is \$95,000. The contract began April 3, 1996, and will terminate on July 31, 1996.

Issued in Arlington, Texas, on April 23, 1996.

TRD-9605728 R. Michael Eastland
Executive Director
North Central Texas Council of
Governments

Filed: April 25, 1996

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**Texas Department of Protective and
Regulatory Services**

Request for Proposal

Under the provisions of the Texas Human Resources Code, Chapter 40, the Texas Department of Protective and Regulatory Services (PRS), Child Protective Division is soliciting proposals for one contractor to serve as the prime contractor for services for the Program for Adult Living.

Geographic Area to be Served: Region 3; 19 counties in north central area of the state surrounding Dallas and Tarrant counties. Regional Headquarters: 1351 East Bardin Road, Arlington, Texas.

Service Description: This program prepares youths age 14 and older who are in the conservatorship of the Department to live independently upon reaching adulthood. The contractor will process bills and maintain documentation of service delivery for services provided directly or by subcontractors designated by the department to these youth, and will be responsible for the delivery of services by the subcontractors.

Deadlines: The last date that offers and modifications of offers to this Request for Proposals (RFP) will be received is May 24, 1996, at 5:00 p.m. PRS shall be the sole and final arbitrator of when offers are received based on post marked prior to the closing date or log of hand delivery of offers before or on the closing date.

Eligible Applicants: Eligible applicants are private non profit organizations and government agencies. **Limitations:** Funding of the selected proposal will be dependent upon available federal and/or state appropriations. The Department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the Department.

Effective Dates of Award: The effective dates of any contract awarded under this RFP will be September 1, 1996 through August 31, 1997. The contract is renewable at the Department's option not to exceed four years.

Amount of Award and Limitations: The amount of the initial award for these services shall not exceed \$193,111 for all PAL services including the prime contractor's reimbursement. Funding will be dependent upon available state appropriations that PRS has allocated to these services. PRS reserves the absolute right to reject any and all offers received in response to this notice of intent to purchase services, and to amend, suspend, or cancel this notice in whole or in part if it is deemed in PRS's best interest.

Evaluation and Selection: A panel of program and ad-

ministrative staff selected by PRS will rank and score the proposals. The evaluation method and criteria will be specified in advance. Considerations are service description, previous relevant experience, budget information, and financial ability to perform.

Contact Person: Inquiries, requests for a copy of the Request for Proposals (RFP), or the return of proposals pertaining to this purchase of services may be addressed to Bernie Sorrels, Program Director for Child Protective Contracts, Region 3, TDPRS, P.O. Box 181839, CPS Contracts-Box 33, Arlington, Texas 76096-1839, (817) 264-4000, extension 2231.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605832 C. Ed Davis
Deputy Director for Legal Services
Texas Department of Protective and
Regulatory Services

Filed: April 26, 1996

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Public Utility Commission of Texas

**Notice of Application to Amend
Certificate of Convenience and
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 17, 1996, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act of 1995, §§1.101(a), 2.201, 2.101(e), 2.252, 2.255, 3.252, and 3.254. A summary of the application follows.

Docket Title and Number: Joint Application of City of Luling, Central Power and Light Company, and Bluebonnet Electric Cooperative, Inc. to Amend Certificated Service Area Boundaries within Caldwell County, Docket Number 15691 before the Public Utility Commission of Texas.

The Application: In Docket Number 15691, City of Luling, Central Power and Light Company, and Bluebonnet Electric Cooperative, Inc. requests approval of the application to allow a service area exception within the current certificated service area boundaries within Caldwell County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605821 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 26, 1996

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

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application

pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Shell Oil Company in Houston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Shell Oil Company in Houston, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15722.

The Application. Southwestern Bell Telephone Company is requesting approval of a 1,200 station addition to the existing PLEXAR-Custom service for Shell Oil Company. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605823 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 26, 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 Lubbock ISD in Lubbock, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Lubbock ISD in Lubbock, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15721.

The Application. Southwestern Bell Telephone Company is requesting approval of a 295 station addition to the existing PLEXAR-Custom service for Lubbock ISD. The geographic service market for this specific service is the Lubbock, 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 April 26, 1996.

TRD-9605822 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 26, 1996



Railroad Commission of Texas

Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for the regrading of approximately 171 acres at the Butler-Weddington (Area 2B)

Abandoned Mine Land (AML) Regrade site. The site is located in Karnes County, 11 miles southwest of Falls City, Texas off F.M. 791.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A., §§1201 et seq), the commission will award a unit price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2:00 p.m., June 26, 1996, at which time the bids will be publicly opened and read at the address given. A mandatory pre-bid conference will be held at the site at 10:00 a.m., June 5, 1996. Construction work item will include:

- 1) Mobilization
- 2) Clearing and Grubbing
- 3) Topsoil Handling
- 4) Embankment
- 5) Earthwork
- 6) Water Control Structures
- 7) Erosion Repair
- 8) Special Handling of Unsuitable Spoil Materials

The complete bid package may be obtained from the following mailing address: Butler-Weddington (Area 2B) Abandoned Mine Land (AML) Regrade Project; Railroad Commission of Texas; Surface Mining and Reclamation Division; P.O. Box 12967; Austin, Texas 78711-2967; Attn: Melvin B. Hodgkiss, P.E., Director.

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. Railroad Commission of Texas; Surface Mining and Reclamation Division; 1701 North Congress Avenue; Austin, Texas 78711-2967. All questions concerning the work or bid document must be received by 5:00 p.m., June 14, 1996. For additional information call Mark Rhodes at (512) 305-8834.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605794 Mary Ross McDonald
Assistant Director, Office of General
Counsel, Gas Services Section
Railroad Commission of Texas

Filed: April 26, 1996



The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for the closure of eight mine openings at the Guadalupe Mountains National Park Abandoned Mine Land (AML) Project. Two other mine openings at the project site present no safety concern and will not require closures. The site is located in the Dog Canyon area on the north side of Guadalupe Mountains National Park approximately 1 1/2 miles from Dog Canyon Ranger Station. The work sites are within designated wildness areas. Interested parties must be willing to work under rigorous backcountry conditions.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A., §§1201 et seq), the commission will award a unit price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2:00 p.m. C.T., May 31, 1996, at which time the bids will be publicly opened and read at the address given. A

mandatory pre-bid conference will be held at the Dog Canyon Ranger Station at 9:00 a.m. M.T., May 15, 1996. Prospective bidders must be able to view all the sites, which will require traversing hiking trails and cross country on steep terrain and loose rocky materials, which may rise approximately 1,000 feet in elevation over 1.5 miles. The bidders are responsible for providing their own provisions (food, water, suitable clothing and footwear) to fully participate in a rigorous full day pre-bid conference. Construction work items will include:

- 1) Mobilization
- 2) (4) Backfills
- 3) (3) Bat Gates
- 4) (1) Corrugated Steel Pipe and Angle Steel Closure

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the mailing address: Guadalupe Mountains National Park AML Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; P.O. Box 12967; Austin, Texas 78711-2967; Attn: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received by 5:00 p.m. C.T., May 22, 1996. For additional information call Mark Rhodes at (512) 305-8834.

Issued in Austin, Texas, on April 26, 1996.

TRD-9605795 Mary Ross McDonald
Assistant Director, Office of General
Counsel, Gas Services Section
Railroad Commission of Texas

Filed: April 26, 1996

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Texas Department of Transportation

Request for Proposals

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Number 16-645P5001: Relocation of SH44/SH 359 in Alice (Relief Route). This contract will consist of Schematics, Public Involvement, Environmental Assessment, and Right-of-Way map preparation. Also included are environmental impact studies, assessments or statements; highways, streets, airfield paving; surveying; plotting; mapping; flood plain studies; traffic and transportation engineering. Future plans are for construction of a freeway facility.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (512) 808-2407, or hand-delivered to TxDOT, Corpus Christi District Office, 1701 South Padre Island Drive, Attention: Patrick U. Norrell, P.E., Director of Transportation Planning and Development, or mailed to Texas Department of Transportation, P.O. Box 9907, Corpus Christi, Texas 78469-9907. Letters of interest will be received until 5:00 p.m. on Friday, May 17, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact

person and refer to Contract Number 16-645P5001. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet. TxDOT will not issue Request for Proposal packet without receipt of letter of interest.)

Pre-proposal Meeting: A pre-proposal meeting will be held on Thursday, May 23, 1996, at the TxDOT, Corpus Christi District Office, 1701 South Padre Island Drive beginning at 1:30 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting).

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Paula Sales, P.E., Advanced Projects Development, at (512) 808-2329 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for Contract Number 16-645P5001 will be accepted until 5:00 p.m. on June 10, 1996 at the TxDOT Corpus Christi District Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Paula Sales, P.E., Advanced Projects Development, at (512) 808-2329 or Fax (512) 808-2407.

Issued in Austin, Texas on April 25, 1996.

TRD-9605762 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: April 25, 1996

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Texas Water Development Board

Request for Proposals for Regional Water Supply and Wastewater Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of regional planning proposals leading to the possible award of contracts to evaluate and determine the most feasible alternatives to meet water supply and wastewater facility needs, estimate the costs associated with implementing feasible water supply and wastewater facility alternatives, and identify institutional arrangements to provide regional water supply and wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate water supply and wastewater facilities.

Regional planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of this program is for the State to assist local governments to prepare regional-level plans that document water supply and wastewater service needs, identify feasible regional alternatives to meet water supply and wastewater needs, and present estimates of costs associated with pro-

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