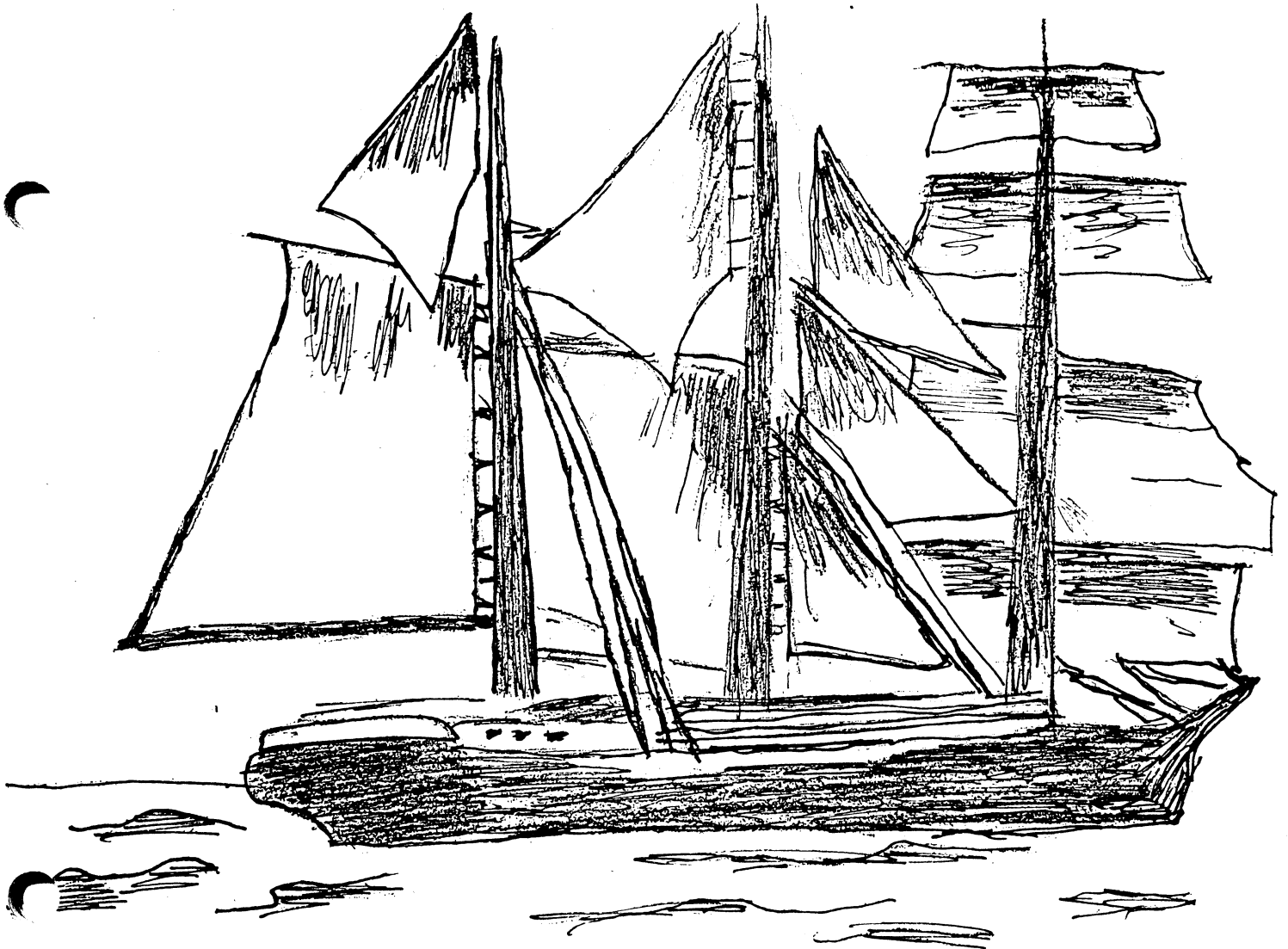

TEXAS REGISTER

Volume 21 Number 83 November 8, 1996

Page 10943-11021



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Artist: Nick Davis

5th grade

Copeland Intermediate, Huffman ISD

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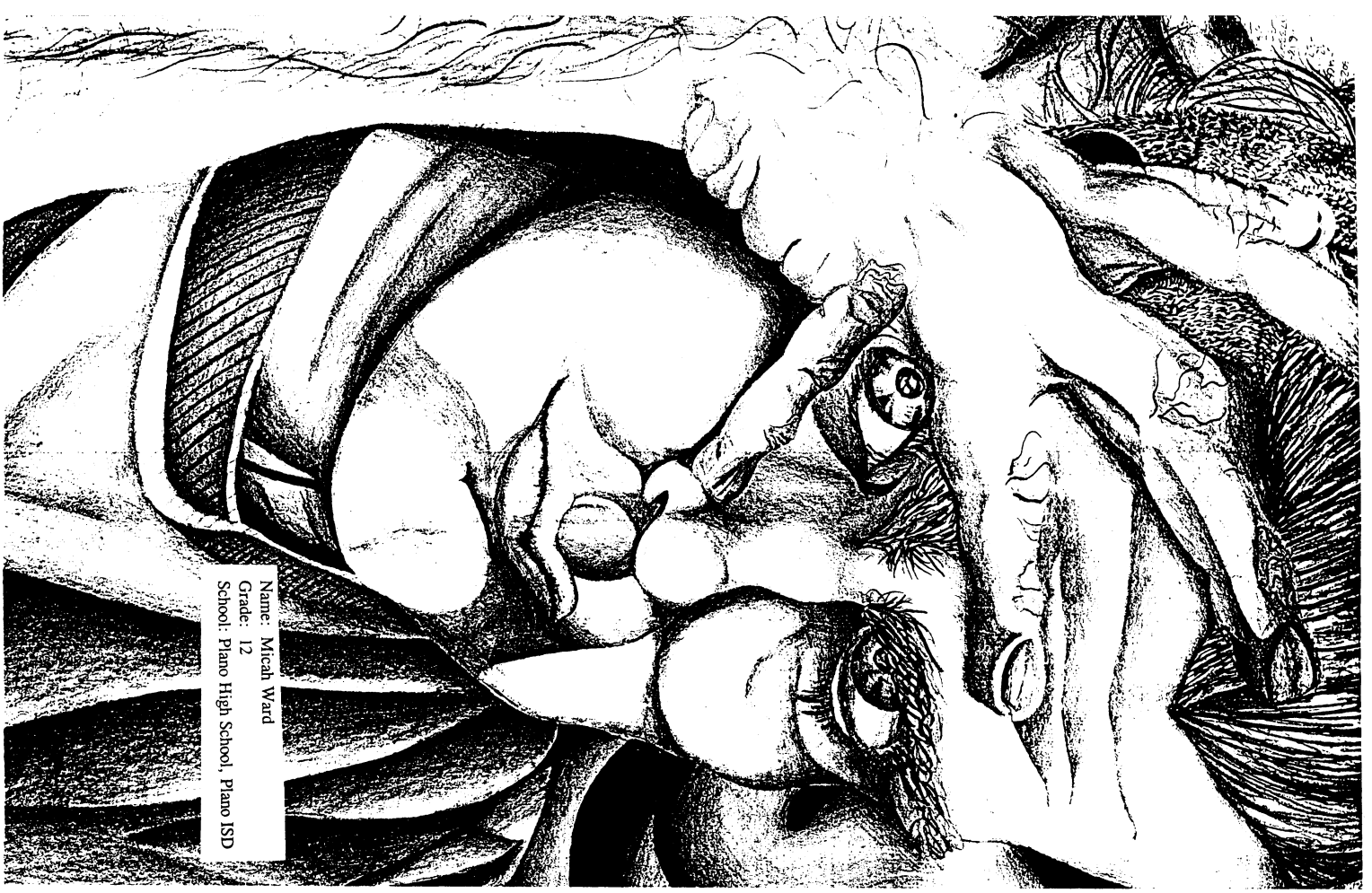
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Name: Micaiah Ward
Grade: 12
School: Plano High School, Plano ISD



Name: April DeLaney
Grade: 12
School: Plano High School, Plano ISD



Name: Katie Archer
Grade: 12
School: Plano High School, Plano ISD

OFFICE OF THE 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 records 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.

Open Records Decision

ORD-648 (RQ-674). Request from the Honorable Jack Harris, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether the Government Code, §552.101, in conjunction with the Government Code, Chapter 306 makes confidential letters received by a legislator and the originating number and other information concerning telephone calls made to a legislator.

Summary of Decision. Letters from a citizen of this state received by a legislator in his official capacity are "written communications of citizens" within the Government Code, §306.004(a). Records of the date, connect time, and duration, and originating number of citizen calls to a toll-free number in a legislator's office that are maintained on the Legislative Council computer are not "memoranda of communications with residents of the state" under §306.003(a) or "recorded communication[s] from a citizen of this state" received by a legislator or the lieutenant governor under §306.004. The originating number is "personal information concerning the person communicating with the member or lieutenant governor" under §306.003(a). Information falling within the scope of the Government Code, Chapter 306 may be released only as that chapter provides and does not fall within the scope of the Texas Open Records Act, Government Code, Chapter 552. A member of the legislature or the lieutenant governor may elect to disclose all or part of the information within the Government Code, §306.003(a) and §306.004, but is not required to do so.

TRD-9615813



Open Records Request

ORQ-20 (ID# 102620) Request from Ms. Mary Keller, Senior Associate Commissioner, Legal and Compliance, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, regarding whether requests for information transmitted after 5:00 p.m. by e-mail or fax are considered "received" on the next business day for purposes of computing deadlines under the Texas Open Records Act, the Government Code, Chapter 552, and related questions.

TRD-9615929

Opinions

DM-409(874). Request from James D. Goerke, Executive Director, Advisory Commission, on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, concerning whether Health and Safety Code §777.007 requires the state to

indemnify an individual who is not an employee of a regional poison control center and related questions.

SUMMARY Health and Safety Code §777.007 requires the state to indemnify only an employee of a regional poison control center. An individual's status as an employee is determined by whether the putative employer has a right to control the details of the individual's work. In addition, an employee is distinguished from a volunteer by an employee's contractual (express or implied) right to compensation.

An employee of a state agency, not a regional poison control center, is not entitled to indemnification under Health and Safety Code §777.007. Thus, an officer or employee of the Advisory Commission on State Emergency Communications, the Texas Department of Health, the General Services Commission, or the coordinating committee established by Health and Safety Code §777.008 who are not employees of a regional poison control center are not entitled to indemnification under §777.007. Of course, other statutes may provide these individuals with indemnity or exempt them from liability. Furthermore, §777.007 does not require the state to indemnify volunteers or independent contractors of a regional poison control center.

DM-410(RQ-844). Request from The Honorable Harvey Hilderbran, Chair, Committee on Human Services, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the supermajority requirement in Local Government Code §212.015(c) is unconstitutional and related questions.

Summary The supermajority requirement in Local Government Code §212.015(c) is not unconstitutional on its face.

DM-411(RQ-786). Request from Mr. David W. Myers, Executive Director, Texas Commission for the Deaf, and Hearing Impaired, P.O. Box 12904, Austin, Texas 78711, concerning use of an interpreter for deaf and hearing-impaired persons in administrative and judicial proceedings.

Summary Parties and witnesses to juvenile detention hearings who are deaf or hearing-impaired, like all such parties and witnesses in civil cases, are entitled under §21.002 of the Civil Practice and Remedies Code to the services of a qualified interpreter, as defined by §21.003 of the Civil Practice and Remedies Code. For the purposes of a juvenile detention hearing, §51.02(10) of the Family Code defines "party" as including "the state, a child who is the subject of proceedings . . . , the child's parent, spouse, guardian, or guardian ad litem." A custodial relative not included within §51.02(10)'s list of parties who is not a witness to the proceedings is not entitled as a matter of law to the services of an interpreter under Texas statutes,

nor does the Americans with Disabilities Act, 42 United States Code §§12101 through 12213, require the provision of an interpreter to such a person.

A grand juror must be provided with the services of an interpreter whose qualifications are the same as those mandated for an interpreter for a deaf defendant or witness by Code of Criminal Procedure, Article 38.31(g)(2), in order to guarantee the grand juror the right of access mandated by 42 United States Code §12132.

In the event that the services of the interpreter are necessary to aid the grand juror in deliberation, the Americans with Disabilities Act would require the provision of such services in the grand jury room despite the strictures of Code of Criminal Procedure, Article 20.011(b).

To the extent that interpreter services are required in order to make court-mandated services available to deaf or hearing-impaired persons on a nondiscriminatory basis, the costs of such services may not be imposed on such persons by taxing them as court costs.

DM-412(RQ-892). Request from The Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891, concerning whether a county juvenile board is authorized to provide educational services to students who have not been adjudicated delinquent by a juvenile court and ordered to attend a juvenile justice alternative education program pursuant to Education Code, §37.011(b), and related question.

Summary A county juvenile board is authorized to provide educational services at a juvenile justice alternative education program to students other than pursuant to a juvenile court order under §37.011(b)(1). A county juvenile board is authorized to enter into a memorandum of understanding with school districts that provides for JJAEP placement of students expelled from school but not adjudicated delinquent pursuant to §37.011(b).

DM-413(ID# 27238). Request from The Honorable Cindy Maria Garner, District Attorney, 349th Judicial District, P.O. Box 1076, Crockett, Texas 75835, The Honorable Joey L. Boswell, Comanche County Auditor, Courthouse, Comanche, Texas 76442, concerning whether a county is liable for the payment of medical expenses that a county jail inmate who is not an eligible county resident under chapter 61 of the Health and Safety Code incurs.

Summary Under Code of Criminal Procedure, Article 104.002(d), a hospital district is entitled, at the time it renders medical services to an inmate of the county jail who is not eligible for assistance under Chapter 61 of the Health and Safety Code, to payment from the inmate. The noneligible inmate is ultimately liable for the costs of medical services he or she receives while incarcerated. If the inmate is unable to pay the hospital district at the time he or she receives medical services from the hospital district, the county of incarceration must pay for the services. Section 104.002(d) authorizes the county to seek reimbursement from the inmate or from another source, however.

DM-414(RQ-894). Request From Mr. Barry R. McBee, Chair, Texas Natural Resource, Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, concerning whether the state constitutionally may implement, as part of its vehicle emissions inspection and maintenance program, a federal requirement that the state temporarily may suspend station or inspector licenses immediately upon finding a violation of the program or equipment failure.

Summary The immediate temporary suspension requirement in 40 Code of Federal Regulation §51.364(b)(1), under which a state must authorize a quality assurance officer temporarily to suspend, prior to providing a hearing, the license of an inspection station or inspector for violations of the state's vehicle emissions inspection and maintenance program, does not violate Texas Constitution Article I, §19, the due-process clause, unless it violates the federal constitution. We believe a court would find that the immediate, temporary suspension requirement does not violate the federal constitution as a matter of law. Whether a particular application of the requirement violates constitutional due-process mandates, however, is a question of fact.

DM-415(RQ-853). Request from Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board, of Acupuncture Examiners, P.O. Box 149134, Austin, Texas 78714-9134, concerning whether the practice of acupuncture is within the scope of practice for a licensed Texas chiropractor and related questions.

Summary Only a health care professional whose license clearly encompasses the practice of acupuncture is excepted from the training and examination requirements set forth for acupuncturists in Texas Civil Statutes, Article 4495b, Subchapter F. The practice of chiropractic, as delineated in Texas Civil Statutes, Article 4512b, §1, does not clearly encompass the practice of acupuncture. Accordingly, Texas Civil Statutes, Article 4512b, §1, which authorizes a chiropractor to perform only nonsurgical, nonincisive procedures, does not authorize a chiropractor to practice acupuncture.

Thus, the practice of acupuncture is not within the scope of practice for a licensed Texas chiropractor. Conversely, a licensed chiropractor must obtain a license to practice acupuncture if the chiropractor desires to practice acupuncture.

DM-416(RQ-877). Request from Bruce A. Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, P.O. Box 149134, Austin, Texas 78714-9134, concerning whether the Texas Optometry Board may adopt a rule authorizing a therapeutic optometrist to administer cocaine eye drops for diagnostic purposes.

Summary The Texas Optometry Board may adopt a rule permitting a therapeutic optometrist to administer cocaine eye drops for diagnostic purposes, but only if the eye drops are not an antiviral or antiglaucoma agent and if the purpose of the eye drops is to diagnose visual defects, abnormal conditions, and diseases of the human eye and adnexa.

DM-417(RQ-859). Request from The Honorable Barry Telford, Chair, Committee on Pensions & Investments, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether Government Code §822.201(c) constitutionally excludes from salary and wages, for purposes of determining member contributions to and computation of benefits from the Teacher Retirement System, "payments received . . . for teaching a driver education and traffic safety course"

Summary The Government Code, §822.201(c) which, among other things, excludes from compensation that may be used to contribute to and calculate benefits from the Teacher Retirement System "payments received . . . for teaching a driver education and traffic safety course," applies only to payments a driver training teacher receives for teaching driver training in addition to the teacher's regular salary, perhaps pursuant to a supplemental, independent contract.

Whether there is a legitimate state purpose for excluding a payment received outside of a teacher's regular salary for teaching driver

training classes from the salary used to calculate a member's contributions to and benefits from the Teacher Retirement System, as the amendment to §822.201(c) does, while not excluding similar payments a teacher receives for performing other extra-curricular functions, is a fact question. Likewise, whether §822.201(c) actually relates to that purpose is a fact question.

DM-418(RQ-836). Request from Mr. Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning whether the Education Code, §44.031 enacted by Act of May 27, 1995, 74th Legislature, Regular Session, Chapter 260, §1, 1995 Texas Session Law Service 2207, 2425-26, changes the conclusion reached in Attorney General Opinion DM-347 (1995) and related questions.

Summary Newly enacted the Education Code, §44.031 prevails over Attorney General Opinion DM-347 to the extent the opinion is inconsistent with the statute. Section 44.031 does not conflict with the conclusion in Attorney General Opinion DM-347 that a contract for the purchase of insurance is not a contract for professional services. Additionally, whether a contract for the purchase of insurance is a contract to purchase personal property no longer matters in the context of §44.031.

To the extent Attorney General Opinion DM-347 concludes that a school district must competitively bid a contract, valued at more than \$24,999.99 in the aggregate for a twelve-month period, for the purchase of insurance, §44.031 of the Education Code supersedes the opinion. A school district must award such a contract using one of the methods listed in §44.031(a). The board of trustees of the school district must select the method "that provides the best value to the district."

Neither §44.031 of the Education Code nor Attorney General Opinion DM-347 precludes a school district from executing an insurance contract for a period longer than twelve months. A multi-year contract must, however, comply with §271.903(a) of the Local Government Code.

Nothing in §44.033 of the Education Code prohibits a school district from entering a contract for the purchase of insurance with a duration longer than twelve months. Section 44.033(b) of the Education Code does not limit the length of a contract; it merely requires a school district to publish notice seeking vendors interested in supplying the school district with those goods the school district will be purchasing in the upcoming twelve-month period. If the school district enters a multi-year contract, it must comply with §271.903(a) of the Local Government Code.

The requirement in §44.031 and §44.033 of the Education Code, referring to the value of purchases "in the aggregate" indicates that a school district cumulatively must value contracts for like products that a school district normally would purchase together, but only for purposes of determining when a formal procurement process is required by law.

Whether a third-party administrator, licensed under Insurance Code, Article 21.07-6, provides a professional service depends upon whether the service requires predominantly mental or intellectual, rather than physical or manual, skills; whether years of education and service are necessary for a practitioner to attain competence as a third-party administrator; and whether a third-party administrator belongs to a discipline with widely accepted standards of required study or

specified attainments in special knowledge as distinguished from mere skill.

To the extent "reinsurance procurement duties" consist of pricing and acquiring, on behalf of a school district, reinsurance for the school district's self-insurance fund, such duties are not professional services.

To the extent that a contract, valued at \$25,000 or more in the aggregate for a twelve-month period, is for anything other than professional services, produce, or vehicle fuel, a school district must award it using the one method among the six listed in §44.031 of the Education Code that provides the best value to the school district. Likewise, to the extent a contract, valued at between \$10,000 and \$24,999.99, inclusive, in the aggregate for a twelve-month period is for the purchase of personal property, a school district must award the contract either by competitively bidding the contract or in accordance with §44.031(a) and (b). The school board may, but need not, award any professional services included in the contract that are not covered by the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4, in accordance with §44.031 or §44.033, depending on the value of the contract.

DM-419(RQ-426). Request from Dr. Kenneth H. Ashworth, Commissioner, Texas Higher Education, Coordinating Board, P.O. Box 12788, Austin, Texas 78711, The Honorable James M. Kuboviak, Brazos County Attorney, 300 East 26th Street, Suite 325, Bryan, Texas 77803, concerning whether the Texas Guaranteed Student Loan Corporation may garnish the wages of a county employee for the purpose of collecting a federally guaranteed student loan.

Summary The Government Code, §403.055 and §57.48 of the Education Code prohibit the comptroller from withholding salary or retirement warrants from persons who are delinquent in repaying Hinson-Hazlewood college student loans. However, the Texas Guaranteed Student Loan Corporation, pursuant to 20 United States Code §1095a(a) has the authority to garnish the wages of persons who default on Federal Family Education Loan Program loans, including state and county employees, despite the stricture of article XVI, §28 of the Texas Constitution.

TRD-9615945

◆ ◆ ◆

Letter of Opinions

LO-96-063 (RQ-851). Request from The Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a municipality may impose a "user fee" on the grant of building permits and donate the fees collected to a school district to build schools within the city limits.

Summary The City of Plano may not donate public funds to the Plano Independent School District to be spent on the construction of school buildings. The transfer of funds would constitute a gift to the school district in violation of article III, §51 and §52 of the Texas Constitution.

LO-96-064 (ID#38869). Request from The Honorable Mark W. Stiles, Chair, Calendars Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78711-2910, concerning whether a member of a city council or a board of directors of a drainage district

may simultaneously serve as a director of the Clear Creek Watershed Regional Flood Control District.

Summary A member of a city council and a member of the board of directors of a drainage district located within the geographical boundaries of the Clear Creek Watershed Regional Flood Control District are not prohibited by the Texas Constitution article XVI, §40, or the common-law doctrine of incompatibility from serving as directors of the district.

LO-96-065 (ID#38805). Request from The Honorable Delma Rios, Kleberg County Attorney, P.O. Box 1411, Kingsville, Texas 78364, concerning whether the district judges who appoint the county auditor or the county commissioners court may require the county auditor to document the auditor's travel expenses.

Summary Under Local Government Code §152.031(a), a county auditor may not be required to provide documentation of his or her official travel expenses to receive a fixed travel allowance. On the other hand, the district judges who appoint the county auditor and who calculate the auditor's annual salary and travel expense allowance may require the county auditor to provide some documentation of the present year's travel expenses to project the upcoming year's travel expenses. In addition, the county commissioners court has no authority to require the auditor to provide documentation justifying the auditor's travel expense allowance received under Local Government Code §152.031(a).

LO-96-066 (ID#38802). Request from Mr. Winston W. Lorenz, Chair, San Antonio River Authority, P.O. Box 830027, San Antonio, Texas 78283-0027, concerning status of a member of the board of directors of a river authority who assumes office in the so-called "Republic of Texas".

Summary The taking of an oath of allegiance to and acceptance of an "office" from the purported Republic of Texas does not as a legal matter divest a board member of the San Antonio River Authority of his elected public position.

LO-96-067 (ID#38659). Request from The Honorable Michael G. Mask, County Attorney, Jack County Courthouse, Third Floor, Jacksboro, Texas 76458, concerning proper procedure for selecting public members of salary grievance committee when no grand jury convened in county during past year.

Summary A member of a county's salary grievance committee is an officer for purposes of Texas Constitution article XVI, §17 and therefore holds office until a successor is duly qualified. In the event that a successor to a public member of a salary grievance committee cannot be selected because no grand juries were convened in that county during the previous year, the present public members must continue to perform the duties of the office until successors can be selected in accordance with Local Government Code §152.015(b).

LO-96-068 (ID#36038). Request from The Honorable Joe F. Grubbs, Ellis County and District Attorney, Ellis County Courthouse, Waxahachie, Texas 75165-3759, concerning whether a county that issued a bench warrant in a misdemeanor case for a convicted felon being held in Ellis County must hold the defendant for transfer to the institutional division of the Texas Department of Criminal Justice.

Summary A county, "County X," that issued a bench warrant in a misdemeanor case for a defendant convicted of a felony in Ellis County is not obligated to hold the defendant for transfer to the institutional division of the Texas Department of Criminal Justice

once the defendant has disposed of the misdemeanor charge. But Ellis County is required to hold the defendant until he or she may be transferred to the institutional division. County X, therefore, may transfer the defendant back to Ellis County to await transfer to the institutional division.

LO-96-069 (ID#38322).

Request from The Honorable Irma Rangel, Chair, Committee on Higher Education, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a junior college or community college district may use the procedure established by subchapter C, chapter 2, title I, Election Code, when a candidate for its board of trustees is unopposed for election.

Summary The new Election Code procedures for the election of unopposed candidates without holding an election, found in chapter 2, subchapter C, do not apply to the election of a candidate for trustee of a junior college district that is not affiliated with an independent school district. On the other hand, chapter 2, subchapter C applies to a candidate for trustee of a junior college district that is affiliated with an independent school district.

LO-96-070 (ID#37712). Request from The Honorable John Whitmire, Chair, Committee on Criminal Justice, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the Texas Commission on Law Enforcement Officer Standards and Education is authorized to discipline the chief administrator of a law enforcement agency for failing to notify the commission that a peace officer employed by the agency has failed to comply with the statutory requirement for continuing education.

Summary The Texas Commission on Law Enforcement Officer Standards and Education may not, pursuant to §415.034 of the Government Code, implement a proposed rule to discipline chief administrators of agencies where the statute does not impose an affirmative duty on such administrators.

LO-96-064 (ID#38869). Request from David R. Smith, M.D., Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether a special hospital may provide surgical and obstetrical services.

Summary Special hospitals, as defined in §241.003(11), Health and Safety Code, may not provide surgical or obstetrical services.

LO-96-072 (ID#36799). Request from The Honorable Tim Curry, Criminal District Attorney of Tarrant County, 401 West Belknap, Fort Worth, Texas 76196-0201, concerning fees for filing petition for preindictment writ of habeas corpus, and a related question.

Summary Filing fees are applicable to filing a petition for a preindictment writ of habeas corpus when the legislature has made clear its intent that a particular fee provision should apply. The district clerk may not charge the following fees for filing a petition for a preindictment writ of habeas corpus: the court reporter fee, Gov't Code § 51.601(a); the law library fee, Local Gov't Code §323.023(a), the alternative dispute resolution fee, Civ. Prac. & Rem. Code § 152.004(a), the security fee, Local Gov't Code §291.008(a); the appellate judicial system fee, Gov't Code §22.2031(b).

The following fees apply to the filing of an application for a preindictment writ of habeas corpus: the district clerk filing fee, Gov't Code §51.317(b)(1); the records management and preservation fund fee, id. § 51.317(b)(5); and the judicial fee, id. §51.701(a). The

district clerk may not refuse to file the application for the writ for nonpayment of such fees when the applicant is unable to pay.

LO-96-073 (RQ-817). Request from The Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a municipality which withdraws from a transit authority created under the terms of article 1118y, Texas Civil Statutes, may subsequently levy a sales tax under chapter 321, Tax Code, or under §4A or §4B of Texas Civil Statutes, Article 5190.6.

Summary Should the City of Richardson decide by election to withdraw from the Dallas Area Rapid Transit (DART), it would be able—presuming it met the qualifications of article V.T.C.S. 5190.6, §4B(a)(1)(A) or Tax Code §321.101(f) for the ceiling on its sales and use taxes—to adopt sales and use taxes pursuant to article 5190.6, §4B or Tax Code §321.101(a). However, the city is not eligible to adopt a sales and use tax under V.T.C.S. article 5190.6, §4A, or the "additional sales and use tax" created by Tax Code §321.101(b).

LO-96-074 (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 whether a county investment officer, under the Public Funds Investment Act, Government Code chapter 2256, is responsible for investing county and district clerk trust funds, funds collected by the county tax assessor, and the district attorney hot check fund.

Summary Under the Public Funds Investment Act, Government Code chapter 2256, a county investment officer is responsible for the investment of "public funds" in the custody of the county that the county has the authority to invest. A county investment officer is not responsible for the investment of a county or district clerk trust fund governed by chapter 117 of the Local Government Code, funds collected by the tax assessor prior to their transfer to the county treasurer, or a district attorney's hot check fund established pursuant to article 102.007 of the Code of Criminal Procedure.

LO-96-075 (ID#37366). Request from The Honorable James Warren Smith, Jr., Frio County Attorney, 500 East San Antonio Street, Box 1, Pearsall, Texas 78061-1421, concerning use of funds collected as compensation by a prosecuting attorney under §71.041, Family Code, which provides for costs to be assessed against a person who becomes the subject of a protective order as a result of having committed family violence.

Summary Attorney's fees awarded to prosecuting attorneys under §71.041(d) are not analogous to the "hot check fund" created by article 102.007(f) of the Code of Criminal Procedure, and must be administered and disbursed in accordance with the ordinary county budgeting process.

LO-96-076 (RQ-843). Request from The Honorable Carl E. Lewis, County Attorney, Nueces County Courthouse, Room 206, 901 Leopard, Corpus Christi, Texas 78401-3680, concerning whether the Corpus Christi Regional Transit Authority may provide financial assistance to an organization that provides emergency medical transportation services by helicopter.

Summary Article III, §52 of the Texas Constitution does not permit the gratuitous donation of public funds by the Corpus Christi Regional Transit Authority (the "RTA") to an organization which provides emergency medical services. Since, however, the RTA does have authority under §451.067 of the Transportation Code to provide

emergency medical services, it may contract with another entity for the provision of those services.

LO-96-077 (RQ-867). Request from David R. Smith, M.D., Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether the Texas Board of Health is authorized to adopt certain rules under the Medical Radiologic Technologist Certification Act, V.T.C.S. art. 4512m, and related questions.

Summary The Texas Board of Health (the "board") is authorized to approve mandatory training programs in employment settings provided that they satisfy the criteria for "education programs" in §2.03(14) of the Medical Radiologic Certification Act, V.T.C.S. art. 4512m (the "act"). A person who is required to complete mandatory training is not required to register with the Texas Department of Health (the "department"), nor is the board authorized to require such a person to satisfy continuing education requirements. Registrants, and others who are not certified under the act, are subject to certain disciplinary action by the department. Registration does not constitute a license for purposes of Family Code chapter 232 or Education Code §57.491.

The meaning of the term "direct supervision" is ambiguous. We are unable to discern the legislature's intent in enacting these provisions from the definition of "direct supervision" or from the act as a whole. Nor have we located legislative history that sheds any light on the legislature's intent. The act's definition and use of the term "direct supervision" are so vague that a court would probably conclude that an administrative sanction under §2.11(f) or a criminal conviction under §2.13(a)(4) violates due process.

Under §2.05(g) of the act, a person, who is not a practitioner or a certified medical radiologic technologist, and who is excepted from certification under §2.07, may not perform a dangerous or hazardous procedure. The department must exempt practitioners and entities that demonstrate a hardship from certain requirements of the act. The department is not authorized to limit hardship exemptions to applicants in rural areas.

LO-96-078 (ID#31206). Request from The Honorable Don Henderson, Chair, Senate Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2548, concerning whether a justice of the peace may serve as a Bexar County juvenile law master.

Summary Neither §33 nor §40 of article XVI of the Texas Constitution prohibits a justice of the peace from serving as a Bexar County part-time juvenile law master, regardless of whether the justice of the peace accepts compensation for the latter position. The two positions are not incompatible as a matter of law.

LO-96-079 (ID# 38966). Request from Mr. Tom Treadway, Executive Director, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, concerning validity under Texas Constitution, article III, §35 of rider found at article XI, §49, 1995 General Appropriations Act.

Summary The rider found at article XI, §49 of the 1995 General Appropriations Act attempts to adopt and amend general law in violation of article III, §35 of the Texas Constitution and is therefore invalid except to the extent inconsistent with state law.

LO-96-080 (ID# 38944). Request from The Honorable Robert Junell, Chair, Committee on Appropriations, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether

a former member of the legislature may be appointed chancellor of Texas Tech University.

Summary The position of chancellor of Texas Tech University is not a "civil office of profit" and thus, a former member of the legislature is not prohibited by article III, §18 of the Texas Constitution, from assuming the chancellorship during the term for which he was elected.

TRD-9615944



Request for Opinions

ID# 38752. Request from the Honorable Royce West, Chair, Interim Committee on Juvenile Driving While Intoxicated Laws, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding authority of a county to impose a charge for monitoring the operation of a vehicle interlock device.

ID# 38965. Request from the Honorable Earl Lord, Sabine County, Attorney, P.O. Box 1519, Hemphill, Texas 75948, regarding whether a new sheriff may discharge at will employees of the former sheriff in a non-civil service county.

ID# 39000. Request from the Honorable Don Henderson, Chair, Senate Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding whether the Texas usury statute, V.T.C.S., Article 5069, is applicable to payment demands made on Texas residents by out-of-state parties.

ID# 39021. Request from the Honorable Barry B. Telford, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768, regarding validity of an amendment to a contract between the Texas Department of Human Services and the Arkansas - Texas Council of Government.

ID# 39032. Request from Mr. Charles Dunlap, Executive Director, Teacher Retirement System, 1000 Red River Street, Austin, Texas 78701-2698, regarding eligibility of the spouse of a person receiving benefits under the Teacher Retirement System for service on the Board of Trustees of that agency.

ID# 39049. Request from the Honorable Doyle Willis, Chair, Select Committee on Military and Veterans Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910, regarding whether the Veterans Memorial Corporation is exempt from all ad valorem taxation.

ID# 39074. Request from the Honorable Carl E. Lewis, Nueces County, Attorney, 901 Leopard, Room 206, Corpus Christi, Texas 78401-3680, regarding whether rejection of the reappointment of a municipal judge terminates his tenure.

ID# 39076. Request from the Honorable Danny Buck Davidson, Criminal District Attorney, Panola County Courthouse, 110 South Sycamore, Carthage, Texas 75633, regarding Status of the Panola County Road Law.

ID# 39079. Request from the Honorable Danny Buck Davidson, Panola County, Criminal District Attorney, Panola County Courthouse, 110 South Sycamore, Carthage, Texas 75633, regarding status of county road and bridge employees when a county returns to the ex-officio road commissioner system pursuant to Transportation Code, Chapter 252.

ID# 39083. Request from the Honorable Richard J. Miller, Bell County, Attorney, P.O. Box 1127, Belton, Texas 76513, regarding magistrate's authority to require an appearance bond for a class C misdemeanor traffic offense.

ID# 39084. Request from the Honorable Wayne Scott, Executive Director, Texas Department of Criminal Justice, P.O. Box 99, Huntsville, Texas 77342-0099, regarding authority of a state agency to withhold a lump sum amount from the wages of an employee who has agreed in writing to a monthly deduction.

ID# 39095. Request from the Honorable Jose R. Rodriguez, El Paso County, Attorney, County Courthouse, 500 East San Antonio, Room 203, El Paso, Texas 79901, regarding authority of the El Paso County Juvenile Probation Board to contract and expend funds without approval of the commissioners court and related questions.

ID# 39098. Request from the Honorable Charles Moser, Brazos River Authority, President, 4400 Cobbs Drive, P.O. Box 7555, Waco, Texas 76714-7555, regarding whether an individual may simultaneously occupy the position of assistant municipal judge and director of a river authority.

ID# 39101. Request from the Honorable Nora A. Linares, Texas Lottery Commission, Executive Director P.O. Box 16630, Austin, Texas 78761-6630, regarding whether the offer for sale of a sweepstakes ticket combined with a long distance telephone card constitutes an illegal lottery, and additional questions.

ID# 39104. Request from the Honorable John Whitmire, Texas Senate, P.O. Box 12068, Austin, Texas 78711, Regarding whether a private amusement park may prohibit a commissioned peace officer from carrying a concealed handgun on its premises.

ID# 39105. Request from the Honorable Rodney Ellis, Texas Senate, P.O. Box 12068, Austin, Texas 78711, regarding authority of a district or county clerk to destroy bogus documents.

ID# 39120. Request from the Honorable John Whitmire, Texas Senate, P.O. Box 12068, Austin, Texas 78711, regarding status of the DeSoto Economic Development Corporation.

ID# 39159. Request from the Honorable Doyle Willis, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768, regarding authority of a non-profit charitable organization to simultaneously solicit funds for itself and votes for a legislative candidate.

TRD-9615814



EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. 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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 20. Cotton Pest Control

Subchapter C. Stalk Destruction Program

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for Pest Management Zone 3, Area 2 and for Milam, Travis and Williamson counties in Zone 6.

The department is acting on behalf of cotton farmers in Zone 3, Area 2 which includes Austin, Brazoria, and Fort Bend counties and that portion of Wharton County east of the Colorado River, and in Milam, Travis and Williamson counties in Zone 6.

The current cotton destruction deadline for Zone 3, Area 2 is October 30, and for Zone 6 the current deadline is October 31. The cotton destruction deadline will be extended through November 15 for Zone 3, Area 2 and through November 14 for Milam, Travis and Williamson counties in Zone 6. In a previous emergency filing, the department amended the destruction deadline for Zone 3, Area 2 from October 15 to October 30. That amendment and this filing are effective only for the 1996 crop year. The department believes that changing the cotton destruction date is both necessary and appropriate.

Adverse weather conditions have created situations compelling immediate extensions of the cotton destruction dates for all counties in Pest Management Zone 3, Area 2, and for Milam, Travis and Williamson counties in Zone 6. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers in Zone 3 Area 2 from destroying cotton by the October 30 deadline. In Milam, Travis, and Williamson counties, unusually dry weather during the spring planting period caused a substantial delay in the emergence of the crop. As a result, a significant portion of this year's cotton crop will not be ready to harvest until after the October 31 deadline. A failure to act to extend the cotton destruction deadlines could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the dates for cotton destruction through November 15 of this year for Zone

3, Area 2 which consists of Austin, Brazoria, Fort Bend, and that portion of Wharton County east of the Colorado River, and through November 14 for Milam, Travis and Williamson counties in Zone 6.

The amendment is adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. *Stalk Destruction Requirements.*

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:
Figure: 4 TAC §20.22(a)

(b)-(c) (No Change.)

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

TRD-9615741

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: October 29, 1996

Expiration date: November 19, 1996

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Vehicle Emissions Inspection and Maintenance Program

37 TAC §23.91, §23.92

The Texas Department of Public Safety is renewing the effectiveness of the emergency adoption of amended §23.91 and §23.92, for a 60-day period. The text of was originally published in the amended §23.91 and §23.92, issue of the *Texas Register* (21 TexReg 6115).

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

9615659

Dudley M. Thomas

Director, Texas Department of Public Safety

Texas Department of Public Safety

Effective date: October 30, 1996

Expiration date: December 29, 1996

For further information, please call: (512) 424-2890



37 TAC §23.93

The Texas Department of Public Safety is renewing the effectiveness of the emergency adoption of new §23.93, for a 60-day period. The text of was originally published in the new §23.93, issue of the *Texas Register* (21 TexReg 6300).

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

9615661

Dudley M. Thomas

Director, Texas Department of Public Safety

Texas Department of Public Safety

Effective date: October 30, 1996

Expiration date: December 29, 1996

For further information, please call: (512) 424-2890



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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 1. General Procedures

Subchapter G. Interagency agreements

4 TAC §1.320

The Texas Department of Agriculture (the department) proposes new §1.320, concerning a memorandum of understanding (MOU) between the department and the Texas Department of Health. The new section is proposed to establish a MOU between the department and the Texas Department of Health to coordinate regulatory programs and to eliminate conflicting regulatory requirements and inspection standards of shell eggs at the retail level. Proposed §1.320 defines and clarifies words used in the MOU, identifies the general duties to be performed, the mutual agreements, the term of the MOU and the date the MOU was executed.

Margaret Alvarez, coordinator for egg quality, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mrs. Alvarez also has determined that for the first five-year period this section is in effect the public benefit anticipated as a result of enforcing this section will be the elimination of conflicting regulatory requirements to the affected parties of the egg industry including large and small businesses. There is no anticipated economic cost to persons who are required to comply with this section as proposed.

Comments on this proposal may be submitted to Margaret Alvarez, Coordinator for Egg Quality, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The section is proposed under Senate Bill 372, Article 7, §7.03, 74th Legislative Session (1995), now codified at the Texas Agriculture Code, Chapter 132, §132.008, which requires the Texas Department of Agriculture to enter into a memorandum of understanding with the Texas Department of Health regarding the regulation of shell eggs at the retail level.

The Texas Agriculture Code, Chapter 132, is affected by this proposed new section.

§1.320. Memorandum of Understanding Between The Texas Department of Agriculture and The Texas Department of Health, Bureau of Food And Drug Safety.

(a) Statement of Purpose. Senate Bill 372, Article 7, §7.03, 74th Legislative Session (1995) now codified at Texas Agriculture Code, Chapter 132, Subchapter A, requires the Texas Department of Agriculture (TDA) to enter into a memorandum of understanding (MOU) with the Texas Department of Health (TDH) to coordinate regulatory programs and eliminate conflicting regulatory requirements and inspection standards of shell eggs at the retail level.

(b) Definitions. The following meanings apply to this section unless expressly stated otherwise:

(1) TDA - The Texas Department of Agriculture

(2) TDH - The Texas Department of Health

(3) MOU - The Memorandum of Understanding executed by TDA and TDH as required by §132.008 of the Texas Agriculture Code, Chapter 132, Texas Egg Law, under the authority of the Texas Agriculture Code.

(c) General Statement of Duties to be Performed by TDA and TDH. TDA and TDH have reached the following general understanding to provide for better management and coordination of the agencies' regulatory shell egg programs at the retail level to eliminate conflicting regulatory requirements and inspection standards and to prevent duplication of work effort with regard to the inspection of shell eggs at retail establishments. The TDA will continue to inspect egg quality at the producer, wholesale, and retail levels, while TDH will inspect sanitary conditions under which eggs are produced and stored at producer, wholesale, and retail levels.

(d) TDA Duties.

(1) Prescribe standards for the inspection and regulation of shell eggs, including quality, grade, and size of shell eggs. These standards shall be at least equal to those adopted by the United States Department of Agriculture and the U.S. Food and Drug Administration.

(2) Prescribe methods for the labeling for shell egg containers relating to grade, classification and declaration of packing responsibility.

(3) Conduct shell egg inspections at the retail level which include the grading, sizing, and container labeling of shell eggs.

(4) Conduct shell egg inspections, including grading, sizing, temperature determination and container labeling of shell eggs at packing facilities, distributors, and dealer/wholesalers.

(5) Carry out all other duties and responsibilities required by Chapter 132.

(e) TDH Duties.

(1) Enforce temperature standards for shell eggs at retail outlets.

(2) Enforce minimum requirements for the safe and sanitary storage and handling of shell eggs as food products at producer, wholesale, and retail outlets.

(3) Enforce standards for shell egg packaging that meets all applicable labeling required under Texas Health and Safety Code, Chapter 431.

(4) Conduct inspections of retail facilities to ensure the safe and sanitary storage and handling of shell eggs as food products.

(5) Carry out all other duties and responsibilities required by the Texas Health Code.

(f) General Statement of Mutual Agreements.

(1) TDA will not engage in any activity or responsibility assigned to TDH in this MOU, and TDH will not engage in any activity or responsibility assigned to TDA in this MOU.

(2) The general guidelines in this MOU may be supplemented by specific written guidelines in accordance with local needs and may be modified in writing at any time by mutual agreement.

(3) This MOU does not constitute financial obligation by either party nor does it serve as a basis for expenditures. Expenditures made by each party will be in accordance with its rules and regulations, contingent upon funds being available from which expenditures legally may be made.

(g) Term: This MOU shall become effective upon date of signature and shall continue until terminated by mutual consent of parties herein or by either party on notice in writing to the other party 30 days in advance of such termination.

(h) Execution: This MOU was executed on September 30, 1996.

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

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

TRD-9615742

Dolores Alvarado Hibbs
Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: December 9, 1996

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter S. Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies

28 TAC §3.3090

The Texas Department of Insurance proposes an amendment to §3.3090, concerning outline of coverage. This amendment is necessary to streamline implementation of the provisions of the Insurance Code, Article 3.70-1(G), relating to outline of coverage. The amendment is also necessary to avoid duplication of effort and resources when complying with 28 TAC §3.3704(7) (relating to Preferred Provider Plans).

Section 3.3090, as amended, allows an insurer issuing individual accident and sickness policies containing preferred provider benefits to provide to its insureds an outline of coverage by supplementing and providing the disclosure required by §3.3704(7) in lieu of requiring the insurer to provide two separate documents in order to comply with §3.3704(7) and §3.3090.

Tyrette Hamilton, deputy commissioner, life/health group, has determined that for each year of the first five years the section is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed section. There will be no measurable effect on local employment or local economy.

Ms. Hamilton also has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the section will be a cost effective mechanism to assure more efficient and clearer administration of the rules. There will be no cost to persons complying with the section, and that, in fact, compliance with the section will result in cost savings to those affected by the section.

Comments on the proposal must be submitted within 30 days after publication of the section in the *Texas Register* to Caroline Scott, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Tyrette Hamilton, Deputy Commissioner, Life/Health Group, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code, Articles 3.70-1(D) and 1.03A, and Government Code, Chapter 2001, §§2001.004 et seq. The Insurance Code, Article 3.70-1(G) provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the article. The Insurance Code, Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following article is affected by this proposal: Article 3.70-1

§3.3090. *Outline of Coverage Generally.*

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

(c) Insurers issuing individual accident and sickness policies that contain preferred provider benefits are not required to deliver the outline of coverage prescribed in subsection (a) of this section if the written description prescribed in §3.3704(7) of this title (relating to Freedom of Choice) is delivered at the time of application, or no more than 14 days prior to application. If the insurer does deliver the written description prescribed in §3.3704(7), it must be modified to include the information required by §3.3092(b)(5) and (6) of this title (relating to Format, Content, and Readability for Outline of Coverage). Modifications may be achieved by providing a supplemental attachment.

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

Issued in Austin, Texas, on October 28, 1996.

TRD-9615669

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 9, 1996

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 297. Water Rights, Substantive

Subchapter . Issuance and Conditions of Water Rights or Certificate of Adjudication

30 TAC §297.57

The Texas Natural Resource Conservation Commission (commission) proposes new §297.57, relating to Emergency Suspension of Permit Conditions.

EXPLANATION OF PROPOSED RULE.

The purpose of the proposed rule is to set forth the procedures and criteria to be used by the commission in its review and action on a petition by a water right holder for the temporary suspension of conditions in the water right relating to beneficial inflows to bays and estuaries and instream uses during an "emergency" if there are no practicable, feasible alternatives to the suspension pursuant to Texas Water Code, §11.148.

Proposed new §297.57 establishes the purpose for which a petition may be submitted and describes an emergency condition necessitating the submission of a petition. Also, it establishes minimum requirements for the contents of the petition and provides that the petition must be filed with the Texas Parks and Wildlife Department at the same time it is filed with the commission. Also, the proposed rule requires the commission to conduct a hearing within 15 days of the date on which the order to suspend is issued to determine if the suspension should be continued. Additionally, the proposed new rule would provide that if the water right holder has a water conservation plan and/or drought contingency plan, the suspension of permit conditions may be contingent upon the full implementation of such plans and measures corresponding to the staged reduction of releases for existing instream uses and beneficial inflows to the bays and estuaries. The proposed rule includes provisions for the passage of existing instream flows up to that amount necessary to maintain water quality standards for the affected stream segment. Finally, the proposed new rule provides that if a water right already contains provisions for the suspension or partial suspension of permit conditions for the maintenance of instream flows or freshwater inflows to the bays and estuaries, further or different relief requested in the petition may be denied unless the petitioner can show significantly changed circumstances or an emergency condition not contemplated when the water right condition was issued.

FISCAL NOTE.

Steve Minick, Budget and Planning Division, has determined that there will be some fiscal impacts to water right holders based on the cost for preparing the petition and gathering the necessary information to complete the petition. However, those impacts could be more than offset by the benefits derived from the suspension of permit conditions and the preservation of water supplies. Mr. Minick has also indicated the potential for some impact to the agency program charged with the processing of the petition, in the form of manpower and time requirements.

PUBLIC BENEFIT.

The public benefit anticipated as a result of the amendments would be the clarification of commission interpretation and application of its rules, the Water Code, and other applicable law.

TAKINGS IMPACT ASSESSMENT.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. In its Assessment, the commission finds that the primary purpose of this rule is to provide assistance to water right holders in understanding what will be required for the submission, review, and approval of a petition pursuant to §11.148, Texas Water Code. Promulgation and implementation

of this rule will not affect the private property which is the subject of the rule.

SUBMITTAL OF COMMENTS.

Written comments may be mailed to Lutrecia Oshoko, Office of Policy and Regulatory Development, Texas Natural Resource Conservation Commission, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087. All comments should reference Rule Log Number 96157-297-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 Bruce Moulton, Water Policy Division, at (512) 239-4900.

STATUTORY AUTHORITY.

The new rule is proposed under the Texas Water Code, §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provision of the Texas Water Code and the laws of the state.

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

§297.57. *Emergency Suspension of Permit Conditions.*

(a) The purpose of this section is to implement Texas Water Code, §11.148 to protect public health, safety, and welfare during an emergency.

(b) Upon petition filed by the affected water right holder in accordance with this section, the commission shall consider and may approve the temporary suspension of all or a part of conditions in a water right relating to beneficial inflows to affected bays and estuaries and instream uses if the commission finds that an emergency exists and there is no feasible, practicable alternative to the suspension. The burden of demonstrating that the petition should be granted in accordance with this section is on the petitioner. For purposes of this section, an emergency is a condition which constitutes an imminent peril to the public health, safety, or welfare and may include the reduction of public water supplies to critical levels as a result of a severe and sustained drought.

(c) The petition must be sworn and contain the following information:

- (1) the name of the petitioner and copies of the affected permits, certificates of adjudication, or certified filings;
- (2) a description of the emergency and its impact on public health, safety, and welfare;
- (3) a summary of existing water supplies available to the petitioner and their use;
- (4) a summary of the examination made by the petitioner of whether feasible, practicable alternatives exist to the suspension of permit conditions;
- (5) copies of the water right holder's water conservation and drought contingency plans, if any, and a summary of their status and implementation;
- (6) a copy of the reservoir operating procedures, if applicable; and

(7) the proposed conditions and trigger levels for the suspension and reinstatement of the releases.

(d) A copy of the petition must be filed with the Texas Parks and Wildlife Department (TPWD) at the same time it is filed with the commission.

(e) Notice of the time and location of commission's consideration of a petition shall be provided to TPWD as soon as possible but not less than 72 hours prior to the time the commission takes such action. The TPWD shall be provided an opportunity to submit comments on the proposed suspension prior to the commission taking action and the commission shall consider those comments before taking action on the petition.

(f) The commission may suspend the conditions in the water right without individual notice to any other person other than TPWD. However, notice of the suspension of water right conditions, if granted, shall be provided by the petitioner immediately following a favorable commission decision on the petition by publication in a newspaper of general circulation in the affected area. Such published notice must contain a summary of the information contained in the petition as provided by subsection (c) of this section and the time and location of the subsequent commission hearing provided by subsection (g) of this section. Such publication shall occur not later than seven calendar days prior to such hearing.

(g) The commission shall conduct a hearing within 15 days of the date on which the order to suspend is issued to determine whether the suspension should be continued.

(h) In determining whether feasible, practicable alternatives exist to the suspension of water right conditions, the commission shall examine the amount and purposes of use for water currently being used by the petitioner, all evidence relating to the availability of alternative, supplemental water supplies to the petitioner, and the petitioner's efforts to curtail water use not essential for the protection of the public health, safety, and welfare. If the water right holder has a water conservation plan and/or drought contingency plan, the suspension of water right conditions may be contingent upon the full implementation of such plans and measures corresponding to the staged reduction of releases for existing instream uses and beneficial inflows. If the water right holder does not have a water conservation plan and drought contingency plan in accordance with Chapter 288 of this title (relating to Water Conservation Plans, Guidelines and Requirements), the commission order granting a petition under this section shall require the permittee to develop and implement such plans within a prescribed time period as provided in the order.

(i) In granting a petition, all existing instream flows shall be passed up to that amount necessary to maintain water quality standards for the affected stream. Additional flows necessary to protect a species in accordance with the federal Endangered Species Act or other species that are considered to be of "high interest" (self-sustaining wild populations that are endemic to the affected stream, have significant scientific value, or commercial value) may also be required.

(j) In order to assist in the preparation and planning for water management during an emergency, the commission may provide conditions in a water right necessary for relief consistent with applicable portions of this section when the water right is initially granted or subsequently amended. These conditions may include a staged approach to the reduction in the pass-through amounts that

provide for the pass-through of water for instream uses and bays and estuaries when it is available, and allow water to be captured or diverted for the protection of the public health, safety and welfare during an emergency, subject to the protection of stream flows necessary under subsection (i) of this section for the maintenance of water quality standards. Such conditions may also include full implementation by the water right holder of water conservation and drought contingency plans as a precondition for obtaining relief.

(k) If the petitioner's water right already contains provisions for the temporary, total or partial suspension of permit conditions for the maintenance of instream flows or freshwater inflows to bays and estuaries, further or different relief requested in the petition may be denied unless the petitioner can show new or changed circumstances or an emergency condition not contemplated when the water right condition was issued.

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 October 28, 1996.

TRD-9615676

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 9, 1996

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



Chapter 317. Design Criteria for Sewerage Facilities

30 TAC §317.1

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §317.1, relating to the General Provisions of the Design Criteria for Sewerage Systems.

EXPLANATION OF PROPOSED RULE.

The purpose of the amendment is to greatly reduce the volume of plans and specifications that are required to be sent to the executive director and to eliminate notification procedures for municipalities which qualify as plans and specifications review authorities. These changes are necessary to allow limited staff resources to focus on those plans and specifications which need staff review because of: a proposed innovative technology; a history of compliance problems; special considerations associated with the stream segments which will receive the effluent discharge; and where no qualified municipalities exist to review plans and specifications pursuant to House Bill 1826. Additionally under this proposal, those persons subject to the submittal requirements specified in the Texas Water Code, §26.034, would initially, only be required to submit to the executive director summary information regarding a proposed wastewater collection, treatment, or disposal project; thereby eliminating the burden of sending in detailed technical information and blueprints to the agency if no agency review is to be performed. Such information would remain on file with the project originators and be available for TNRCC inspection. The amendment also more clearly recognizes qualified municipalities as

review authorities for wastewater collection system plans and specifications. Such municipalities would include those which perform technical reviews of the collection system projects proposed within their jurisdictions. As with the existing rules, such projects reviewed and approved by municipalities will not be subject to any submittal or review by the executive director.

Section 317.1(a) sets out the general provisions of the chapter. Proposed §317.1(a)(3) sets out the submittal requirements for plans and specifications for "domestic wastewater collection systems, treatment systems, and disposal systems." This paragraph specifies the types of submittals necessary and also what types of submittals are subject to executive director review. Proposed §317.1(a)(4) specifies the methods the executive director or other review authority will utilize in approving plans and specifications. Proposed §317.1(a)(5) specifies the requirements of municipalities which act as review authorities. These requirements are consistent with the Texas Water Code, §26.034. The amendment to the paragraph eliminates the requirement that municipalities must notify the executive director before assuming review responsibilities. The amendment also eliminates the requirement that the executive director must approve of the adequacy of a municipality's program. Proposed §317.1(a)(6) establishes the procedures for executive director audits of municipalities that perform technical reviews and approvals of wastewater collection system projects within such municipal jurisdiction. The commission is proposing the deletion of §317.1(a)(7) relating to Changes and Alterations because under the new submittal requirement proposed in §317.1(a)(3) this paragraph becomes unnecessary. Section 317.1(a)(8) relating to Federal Guidelines is being deleted because this section has no legal or practical purpose relative to Chapter 317.

FISCAL NOTE.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years this amended section is in effect, there will be fiscal implications as a result of enforcement and administration of the section. The effects on state government will be anticipated cost savings of approximately \$60,000 in each year of the five year period. The effect on local government will be potential reductions in costs related to the deferral of plan review by the executive director and associated costs of detailed submittal to the executive director, both of which will not be necessary in most cases under the proposed rules. These cost savings will vary on a case-by-case basis for each local government and are not expected to be significant for any one unit of local government. The effect of recognizing local governments as plan review authorities is not expected to impose a fiscal implication, as such plan reviews would be activities already conducted under local ordinance or similar authority. Any anticipated cost to a local government choosing to assume new responsibilities under this section is assumed to be offset by revenues assessed for costs of service. There are no significant fiscal implications anticipated for small businesses.

PUBLIC BENEFIT.

Mr. Minick also has determined that for the first five years this section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be improvement in the involvement of local jurisdictions in

approval of wastewater facility design and construction, as well as more efficient and cost-effective regulation of wastewater facility standards. There are no costs to persons, except where the impacts described previously include an individual, to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the proposed rule is to ease the burden on the commission and those regulated by the rule by not requiring completed plans and specifications and engineering reports for all wastewater projects to be submitted to commission for approval. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules.

SUBMITTAL OF COMMENTS.

Written comments on the proposal should refer to Rule Log Number 96148-317-WT and may be submitted to Lutrecia Os-hoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. Such comments will not receive individual responses but, rather, will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For further information concerning this proposal, please contact Louis Herrin at (512) 239-4552.

STATUTORY AUTHORITY.

The amendment is proposed under the Texas Water Code, §26.023, which provides the commission with the authority to make rules setting water quality standards for all water in the state. 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 powers and duties under the Texas Water Code and other laws of this state.

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

§317.1. General Provisions.

(a) Purpose. These design criteria are minimum guidelines to be used for the comprehensive consideration of domestic sewage collection, treatment, or disposal systems and establish the minimum design criteria pursuant to existing state statutes pertaining to effluent quality necessary to meet state water quality standards. These criteria are intended to promote the design of facilities in accordance with good public health and water quality engineering practices. These criteria include the minimum requirements for a preliminary engineering report which provides the general engineering concepts underlying the proposed project as well as the final engineering report detailing the fully developed project along with related plans and specifications.

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

(3) Submittal requirements. [Except as provided for in subparagraphs (A)-(D) of this paragraph, plans, specifications, and engineering reports for all wastewater projects shall be submitted to the commission's Wastewater Permits Section. All submittal shall be subject to discretionary review of the executive director. If the executive director chooses to review any submitted project, the design engineer will be notified in writing not later than ten days from the receipt by the commission of completed plans and specifications. If a review of a project is performed by the executive director, any approvals granted for these submittal shall correspond to one of the approval types detailed in paragraph (4) of this subsection. All submittal to the commission shall include a cover letter which has the signed and dated seal of a professional engineer registered in the State of Texas. The cover letter shall state that the plans and specifications are in substantial compliance with the rules in Chapter 317 and that any deviations from Chapter 317 are based on the best professional judgement of the registered professional engineer sealing the cover letter. Also, the cover letter shall include information regarding the project scope, specifics of the project, details of any deviations from this chapter's requirements, and an explanation of reasons for any deviations. Subparagraphs (A)-(D) of this paragraph specify the following variety of project categories for which submittal requirements are reduced:]

(A) "Sanitary sewer collection system projects," except plans prepared by the staff of a municipality, [Those projects] which will be constructed within the jurisdiction of a [qualified] municipality which performs technical reviews of sanitary sewer collection system projects under the Texas Water Code, §26.034, need not be submitted to the agency for review. [has review authority in accordance with paragraphs (5) and (6) of this subsection are not subject to the submittal requirements except as provided by paragraph (5)(G) and (I).]

(B) "Domestic wastewater projects" which receive a technical review and approval from a state agency other than the commission need not be submitted to the agency for review, if:

(i) the review is performed under the supervision of a professional engineer registered in the State of Texas, the review ensures that the project substantially complies with this chapter, and the state agency has requested that the commission not perform technical reviews of a wastewater project or category of projects; or

(ii) the state agency has been granted review authority in lieu of the commission under state law.

(C) A summary transmittal letter shall be submitted, by certified mail, to the Wastewater Permits Section, and to the appropriate commission Region Office, for all other wastewater projects constructed in the State of Texas. If the executive director does not notify the person who submitted the summary that a review will occur, under subparagraph (D) of this paragraph, the project is deemed approved. The information in the summary shall be signed, dated, and sealed by a professional engineer registered in the State of Texas. All summaries shall include, at a minimum:

(i) the name and address of the design firm;

(ii) the name, phone number and facsimile number of the design engineer;

(iii) the county(s) in which the project will be located with an identifying name for the project;

(iv) the name of the entity which proposes to own, operate and maintain the project through its design life;

(v) the permit name and permit number of the relevant wastewater treatment facility;

(vi) a statement verifying that the plans and specifications are in substantial compliance with all the requirements of this chapter and which states that any deviations from the requirements are based on the best professional judgement of the registered professional engineer who prepared the project plans and specifications and final engineering design report; and

(vii) a brief description of the project scope which includes the specifics of the project, a description of deviations from the requirements of this chapter, including the use of non-conforming or innovative technology, and an explanation of the reasons for such deviations.

(D) Any project, for which a summary is submitted, is subject to review by the executive director. Factors to be used to determine whether a review will be performed include; but are not limited to: whether or not a nonconforming or innovative technology is being proposed; the stream segment in which the project is located; and the applicant's compliance record. If the executive director chooses to review a project, the design engineer will be notified in writing or by facsimile of the executive director's intent to review the project, within ten days of receipt of the summary. Upon receipt of the notification of intent to review, the design engineer shall submit to the executive director a complete set of plans and specifications and a complete final engineering design report. These submitted materials shall be sufficient to satisfy the executive director that the project is in substantial compliance with this chapter. If the executive director reviews a project, any approval may be granted under paragraph (4) of this subsection. Construction may not commence until approval has been obtained.

(E) A complete set of plans and specifications, the final version of such plans and specifications with engineer's certification, a complete engineering design report, all change orders and test results, a copy of the written summary submitted to the executive director, and any written approvals granted by the executive director, a municipality, or another state agency, shall be maintained and kept by the permittee, or person(s) responsible for management of a collection system if not the permittee, for at least three years from the date the engineer certifies to the executive director that the project is complete; and must be submitted to the executive director, another state agency, or municipality upon request. Such materials must be readily available for inspection by executive director staff upon request during regular business hours.

[(B) Submittal of plans and specifications for service lateral piping or single lot service grinder pump lift stations, which are not a part of a low pressure sewer system, will not be required;

[(C) Submittal of plans, specifications, and engineering reports for any conventional gravity lines, pressure lines, or lift stations which will transport primarily domestic waste, will not routinely be required if the project will be constructed on privately owned lands and will be operated and maintained with private funds. If a

submittal of plans and specifications for projects which fall into this category is desired by the executive director, a written request for plans and specifications will be sent to the design engineer by the executive director within ten days of receipt of this plans and specifications.

[(D) Except as otherwise specified in subparagraph (B) or (C) of this paragraph, for a wastewater project described in clauses (i), (ii) or (iii) of this subparagraph, a copy of the plans and specifications shall be submitted to the commission's regional office for the region which the proposed project is to be located. Except as otherwise provided, projects in the categories listed in clauses (i)-(iii) of this subparagraph will not routinely be reviewed by the executive director. If the executive director chooses to review a project which is covered in one of these categories, the executive director's review notification letter may include a request for the design engineer to submit an additional copy of the materials for review to the commission's Wastewater Permits Section. The categories include:

[(i) any conventional gravity sanitary sewer collection lines which are extensions to existing systems and which are less than 1,500 feet in length. This condition applies only in cases where the line to which the extension is being added has been completed and in operation at least six months;

[(ii) all duplex lift stations that have a firm pumping capacity of less than 100 gallons/minute;

[(iii) any domestic wastewater projects which receive a technical review and approval from a state agency other than the commission, if the following requirements of subclauses (I) through (III) of this clause or subclause (IV) of this subparagraph are met:

[(I) the review is performed under the supervision of a professional engineer registered in the State of Texas;

[(II) the review shall ensure that the project substantially complies with this chapter;

[(III) the state agency has officially requested that the commission not perform a technical review of a wastewater project or category of projects; and

[(IV) the state agency has been granted review authority pursuant to state law in lieu of the commission. In this case, submittal of plans and specifications to the commission is not required. Also, in this case the executive director will not perform reviews of these projects.]

(4) Types of approval. Regardless of the type of approval, constructed facilities when in operation are required to produce the quality of effluent specified in their discharge permit(s). The types of approvals described in subparagraphs (A)-(C) of this paragraph may [will] be utilized by the commission or any other review authority. [The following case-by-case approvals described in subparagraph (D) of this paragraph apply only to commission approvals:]

(A)-(C) (No change.)

[(D) Case-by-case review. Upon submittal of plans, specifications, and engineering reports (including commission approved application forms) to the commission as required by this subsection, the executive director may approve of the submitted materials. In those cases where a review will not be conducted, a written approval will be sent to the design engineer who submitted the ma-

terials with a notice indicating the plans were not reviewed. Such approval is conditioned upon the design being in substantial compliance with the rules in this chapter. Any deviations from this chapter shall be disclosed and stated to be based on the best professional judgement of the registered professional engineer sealing the plans and the engineer's judgement that the design would not result in a threat to public health or the environment.]

(5) **Municipalities performing technical reviews of sanitary sewer collection systems under Texas Water Code, §26.034, within 90 days of the effective date of this rules and/or within 90 days of a boundaries change, shall submit maps to the agency's Wastewater Permits Section detailing the boundaries of the review authority. If a municipality decides to perform technical reviews of sanitary sewer collection systems after the effective date of this rule, municipality shall submit maps detailing the boundaries of the review authority, within the thirty days before starting these reviews. If at any time a municipality, which has chosen to implement this review authority, decides to cease review of sanitary sewer collection system plans and specifications, the municipality shall notify the executive director within thirty days of the date on which the final plans and specifications review is expected to be performed. In order to meet the standards specified in the Texas Water Code, §26.034, municipalities shall incorporate the items detailed in subparagraphs (A)-(E) of this paragraph into their review programs: [Review and approval of collection system designs by municipalities. The review and approval of plans, specifications, and engineering reports prepared by private engineering consultants for sewer systems which transport primarily domestic wastewater will not be required when a municipality elects to perform certain project reviews. Any municipality with its own internal engineering review staff which performs domestic wastewater project reviews is eligible to perform certain reviews and grant approvals, in lieu of the commission. Any entity which is required by local ordinance to submit engineering reports, plans, and specifications for sewer systems which transport primarily domestic waste to an eligible municipality which provides the review and approval, is not required to submit these review materials to the commission. The commission will not require submission of plans, specifications, and engineering reports for executive director approval so long as the executive director finds through the notification process described in paragraph (6) of this subsection that a municipality's approval procedures will provide substantial compliance with commission standards and all of the following conditions are met by the municipality:]**

(A) **The municipality's review and approval process shall ensure substantial compliance with the rules of this chapter. [The standard specifications of the municipality performing the plans and specifications reviews shall be modified as needed for full compliance with the minimum standards for sewage collection and transport systems, as detailed in this chapter. As an alternative, a municipality's standard specifications may be allowed to vary from these design criteria if the municipality first demonstrates to the executive director that the variance would not result in a threat to water quality or public health. Requests for variances must be submitted in writing, along with the notification required in paragraph (6) of this subsection, by a professional engineer registered in the state of Texas, who is under the full-time employment of the municipality requesting the variance.]**

[(B) **The municipality shall be capable of timely review and approval of all collection system plans, specifications, and engineering reports it receives for review and approval.]**

(B) [(C) **All reviews performed by an employee of the municipality shall be conducted by a professional engineer, registered in the State of Texas, or the employee conducting the review shall be under the direct supervision of a professional engineer, registered in the State of Texas, who is ultimately responsible for the review and approval of each collection system submitted and installed in the municipality's jurisdiction.**

(C) [(D) **The responsible review engineer shall be either an employee of the reviewing municipality, or a consultant to the municipality, separate from the private consulting firm charged with the design work under review. For purposes of this section, the term "separate" means [shall mean] that the responsible review engineer is not employed by and does not receive compensation from the private consulting firm and from any of its parent companies, subsidiaries or affiliates [(or from any of its parent companies, subsidiaries or affiliates)] charged with the design. The municipality shall provide on request documentation of its agreements with private consultants sufficient to allow the agency to audit its compliance with this subsection. [If the responsible review engineer is a private consultant, a contract shall be maintained by the municipality which details all agreements that allow the private consultant to act as the responsible review engineer for the municipality. At a minimum, the contract shall be signed by an authorized representative of the municipality and the private consultant and include the period of time that the private consultant will act as the municipality's responsible review engineer.]**

(D) [(E) **A participating municipality may review and approve engineering reports, plans and specifications only for projects which transport primarily domestic waste within the boundaries of jurisdiction of that municipality. For each project approved for construction, the municipality shall issue an approval letter or other indication of the approval which clearly details the project being approved. [The letter should be issued to the design engineer and the system owner.]**

(E) **The municipality shall maintain complete files of all review and approval activities carried out under its authority and shall make any existing project files available to the commission upon request and/or during audits performed in accordance with paragraph (6) of this subsection.**

[(F) **To ensure adequate coordination and communication with the commission, copies of all approval letters, for all projects reviewed under the authority of the municipality shall be submitted to the commission's Wastewater Permits Section in Austin. Any variances from this chapter granted for projects approved under the authority of a municipality shall be clearly described and justified in the construction approval letter which is written for the project requiring the variance. These approval letters shall be submitted to the commission at least on a quarterly basis, i.e., by March 31, June 30, September 30, and December 31 of each year. The municipality shall maintain complete files of all review activities carried out under its authority and shall make these files available to the commission upon request or during audits performed in accordance with subparagraph (I) of this paragraph. The files shall include, at a minimum, copies of submittal documents, correspondence related to the review**

and approval of the project, construction inspection reports, and testing results.

[(G) If a municipality that has review authority approves its own fully or partially funded capital improvement project, the capital improvement project shall be subject to the same submittal requirements detailed in paragraph (3) of this subsection with the exception that the cover letter shall include the signed and dated seal of a professional engineer registered in the State of Texas, who is under the full-time employment of the municipality which has review authority. The executive director may perform random audit reviews on these capital improvement projects and shall have final decision authority in cases where conflict arises between a review by the executive director and the municipality proposing to construct the capital improvement project. If the executive director determines, upon receiving a submittal of plans and specifications for a capital improvement project, that an audit review of this project will be performed, and that approval will be required before construction may begin on this project, the executive director will notify the municipality within ten working days of the receipt of the plans and specifications that this review will occur. Additionally, the executive director will make every attempt to send either an approval letter or a comment letter within 30 days of receipt of the plans and specifications.

[(H) Construction cannot begin on any project until approval has been granted by the municipality with review authority, and if it is a project described in subparagraph (G) of this paragraph, any approval required from the commission, should the executive director perform an audit review.

[(I) The executive director may perform periodic audits of the municipality's review and approval process. If the executive director decides to perform an audit of the municipality's review and approval process, the executive director will provide the municipality with a minimum of five working days advance notice of the pending audit. The executive director may, for auditing purposes only, review specific projects which have previously been approved by the review authority. If, after a municipality begins to exercise review and approval authority, the executive director finds through reviews of specific projects or through audits of the municipality's review and approval process that a municipality's review and approval process does not provide for substantial compliance with the minimum design and installation requirements detailed in this chapter, the review and approval authority shall be voided for that municipality. If such authority is voided for a municipality, the executive director shall notify the municipality in writing and shall include the justification for voiding the authority of the municipality. If the authority of a municipality is voided, the commission shall require all plans and specifications to be submitted to the executive director for review and approval.]

(6) The executive director may perform periodic audits of the review and approval process of municipalities which perform technical reviews of sanitary sewer collection systems in lieu of the commission, to ensure that the projects approved by the municipalities are in substantial compliance with this chapter. If the executive director decides to perform an audit of a municipality's review and approval process, the executive director will provide the municipality with a minimum of five working days advance notice of the pending audit. The executive director may, for auditing purposes only, review specific projects which have previously been approved by the review authority.

The municipality shall provide to the executive director, on request, documentation of all agreements between the private consultants and the municipality, which relate to the wastewater collection system review program. If the executive director finds through reviews of specific projects or through audits of the municipality's review and approval process that a municipality's review and approval process does not provide for compliance with the minimum design and installation requirements detailed in this chapter, the review and approval authority shall avoid these findings within a time established by the executive director. If compliance cannot be achieved, the review authority shall be voided for that municipality. If such authority is voided for a municipality, the executive director shall notify the municipality in writing and shall include the justification for voiding the authority of the municipality. If the authority of a municipality is voided, all new projects proposed to be constructed within that municipality's jurisdiction shall be submitted to the executive director in accordance with paragraph (3)(C) of this subsection.

[(6) Notification. At least 45 days prior to commencing design reviews as described in paragraph (5) of this subsection, a municipality shall submit a notification to the commission's Wastewater Permits Section. The purpose of the notification is to ensure coordination between the commission and municipality on matters of common jurisdiction and design review authority and to allow the executive director to make a finding that the municipality is in substantial compliance with this chapter. The notification shall include a description of the municipality's proposed program sufficient for the executive director to determine whether the review and approval process meets the provisions of paragraph (5)(A)-(D) of this subsection. Additionally, the notification shall specify the beginning date of the municipality's reviews and it shall include a detailed map showing the boundaries of its review authority. The exemption from submission to and approval by the executive director, provided in paragraph (5) of this subsection shall commence 45 days after notification or upon the written concurrence of the executive director, whichever is sooner, unless the executive director:

[(A) requests additional information from the municipality if it believes it has received incomplete information on which to base a finding; or

[(B) notifies the municipality that it finds that the municipality's review and approval process does not provide for substantial compliance with commission standards.

[(7) Waiver of submittal or review requirements. When minor upgrade, rehabilitation, or maintenance work is planned for existing systems, a waiver of submittal or review may be granted at the discretion of the executive director or the review authority. If a waiver of submittal or review is desired, written notification to the commission, or the appropriate review authority, shall be made and shall include sufficient information to describe the significance of such modifications. If a waiver of submittal or review is requested, it shall be submitted by a professional engineer registered in Texas, and shall include the signed and dated seal of the engineer submitting the waiver request. The executive director or the appropriate review authority will determine whether a submittal or review of engineering plans and specifications will be required following this initial notification of the extent of the planned modifications. Replacement of equipment, piping or materials with like equipment, piping, or materials for purposes of maintenance and repair only, will not routinely require a submittal or a technical review by the

executive director, and also will not routinely require a request for a waiver of submittal or a request for a waiver of review.

[(8) Federal guidelines. Any project constructed with federal financial assistance may be required to conform to federal design criteria or guidelines if such criteria or guidelines are more stringent than those contained herein.]

(b)-(f) (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 October 28, 1996.

TRD-9615675

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 9, 1996

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter F. Motor Vehicle Sales Tax

34 TAC §3.73, §3.85

Due to publication error, §3.73 and §3.85 contained the text for §§3.801-3.806, in the October 1, 1996, issue of the Texas Register. The correct text is being published in its entirety.

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.73 and 3.85, concerning determination of fair market value for replaced vehicles and engaging in business. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §3.73 and §3.85 will be included in the new §3.73, concerning qualifying for fair market value deduction and determination of fair market value for replaced vehicles.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of these rules. The repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeals implement Tax Code, §111.002.

§3.73. *Determination of Fair Market Value for Replaced Vehicles.*

§3.85. *Refunds and Payment Under Protest.*

§3.83. *Payment Instruments.*

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

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

TRD-9613722

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 1, 1996

For further information, please call: (512) 463-4062

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Vehicle Inspection Station Licensing

37 TAC §23.16

(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §23.16, concerning persons with a criminal background. The section is proposed for repeal with simultaneous proposal of new §23.16 that is more consistent with the terms set out by the court of proper jurisdiction.

Tom Haas, Chief of Finance, has determined that for the first five years the repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be more consistency with the courts sentencing. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal. There is no anticipated cost to large or small businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 424-2890.

The repeal is proposed pursuant to Texas Transportation Code, §548.002 which provides that the department may adopt rules to administer and enforce this chapter.

Texas Transportation Code, §548.002 is affected by the proposed repeal.

§23.16. Persons With a Criminal Background.

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

Issued in Austin, Texas, on October 24, 1996.

TRD-9615654

Dudley M. Thomas

Director, Texas Department of Public Safety

Texas Department of Public Safety

Earliest possible date of adoption: December 9, 1996

For further information, please call: (512) 424-2890



The Texas Department of Public Safety proposes new §23.16, concerning persons with a criminal background. The new section will allow for certification of inspectors after fulfillment of the sentence imposed by the courts. This action is filed simultaneous with a proposal for repeal of existing §23.16.

Tom Haas, Chief of Finance, has determined that for the first five years the new section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be the certification of inspectors after completion of the court imposed sentence or probation. There is no anticipated economic cost to individuals who are required to comply with the section as proposed. There is no anticipated cost to large or small businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 424-2890.

The new section is proposed pursuant to Texas Transportation Code, §548.002, which provides the department may adopt rules to administer and enforce this chapter.

Texas Transportation Code, §548.002 is affected by the proposal.

§23.16. Persons With a Criminal Background.

(a) In accordance with Texas Transportation Code, §548.405 and §23.15 of this title (relating to Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings), the department may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station or the certificate to inspect vehicles of any person who has been convicted of a crime.

(b) A conviction for a felony or a Class A misdemeanor or a Class B misdemeanor will be cause for denial, suspension, or revocation, under this subsection, until after the court imposed punishment or supervision has elapsed. For purposes of this section,

a person is convicted of an offense when an adjudication of guilt of an offense is entered against the person by a court of competent jurisdiction.

(c) The license of an inspection station will be subject to denial, revocation, or suspension in the event the owner or operator is convicted of such an offense. In the event that an inspector or inspector applicant is convicted of such an offense, that person's license will be subject to revocation or suspension, or his application will be subject to denial.

(d) A dismissal and discharge in a deferred adjudication proceeding shall not be considered a conviction for the purpose of this section.

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

Issued in Austin, Texas, on October 24, 1996.

TRD-9615655

Dudley M. Thomas

Director, Texas Department of Public Safety

Texas Department of Public Safety

Earliest possible date of adoption: December 9, 1996

For further information, please call: (512) 424-2890



Vehicle Emissions Inspection and Maintenance Program

37 TAC §23.93

The Texas Department of Public Safety proposes new §23.93, concerning vehicle emissions inspections. The new section will implement the provisions of Executive Order GWB96-1 as authorized by Senate Bill 178, 74th Legislature, 1995, which requires the Texas Department of Public Safety in cooperation with the Texas Natural Resource Conservation Commission (TNRCC) to implement a Vehicle Emissions Inspection and Maintenance Program necessary for the state.

New §23.93 establishes a vehicle tailpipe emissions inspection program in Harris County and modifies the programs in Dallas, Tarrant and El Paso counties to comply with the Revised Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP). Section 23.93 further provides definitions, specific requirements for testing particular year models, and rules and regulations for inspectors and inspection stations.

Significant modifications to the emergency adoption are proposed. New §23.93 adds definitions and clarifies current definitions. It also sets out additional procedures for issuing an emissions test only certificate and allows the department to conduct gas audits on analyzers as a quality control measure for the public. Further it provides for a loaded mode vehicle emissions test as an additional quality control measure of the program. Finally, new §23.93 sets out penalties for failing to comply with the rules.

Tom Haas, Chief of Finance, determined that for each of the first five years the rules are in effect the fiscal implications on state government as a result of enforcing and administering the rules includes the cost of additional personnel, equipment and

related expenses. These costs are offset by the inspection fee increase. There is no fiscal impact on local government.

Additionally, Mr. Haas determined the economic impact on business (inspection stations) includes \$6,000 to upgrade a vehicle exhaust gas analyzer or \$12,000 to \$15,000 to purchase a new vehicle exhaust gas analyzer. Other business expenses include a telephone line and \$.88 per vehicle emissions test for the electronic transmission of data to and from the Vehicle Identification Database (VID). The vehicle emissions testing fee was increased to offset the economic impact on the inspection stations.

Mr. Haas also determined that during each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be improved air quality by the reduction of emissions of hydrocarbons, carbon monoxide and other pollutants from mobile sources. An additional benefit is a reduction in long-term vehicle repair costs related to misfueling vehicles. The cost of the vehicle emissions test to an individual required to comply with this section is \$13. As compared to the price of the most recent I/M test for each respective county, this is an additional cost of \$4.25 per emissions test in Dallas, Tarrant and El Paso Counties and \$10.25 per emissions test in Harris County. All additional fees are designated for program implementation.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 424-2890.

The new section is proposed pursuant to the Texas Transportation Code, Chapter 548, which provides the department with the authority to adopt rules to administer and enforce the chapter, and pursuant to the Texas Health and Safety Code, Chapter 382 (the Texas Clean Air Act (TCAA)), which provides the department with the authority to adopt rules consistent with the policy and purposes of the TCAA.

Texas Transportation Code, Chapter 548 and Health and Safety Code, Chapter 382 are affected by the proposal.

§23.93. Vehicle Emissions Inspection Requirements.

(a) General. The rules of the Texas Department of Public Safety set out herein are to maintain compliance with the Texas Clean Air Act. The department is authorized to establish and implement a vehicle emissions testing program that is a part of the annual vehicle safety inspection program, in accordance with the Health and Safety Code, Chapter 382 and rules adopted thereunder.

(b) Terms and/or Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Department of Public Safety (DPS), the terms used by the DPS have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjusted annually-refers to the percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

(2) Department-refers to the Texas Department of Public Safety.

(3) Designated Counties-refers to Dallas and Tarrant counties effective July 1, 1996, through December 31, 1996. Dallas, El Paso, Harris and Tarrant counties effective January 1, 1997, and thereafter.

(4) Designated Vehicles-refers to all motor vehicles, as defined in the Texas Transportation Code, §541.201, unless otherwise exempted or excepted, that are:

- (A) capable of being powered by gasoline;
 - (B) from two years old to and including 24 years old;
- and
- (C) registered in or required to be registered in and primarily operated in a designated county.

(5) Director-refers to the director of the Texas Department of Public Safety or the designee of the director.

(6) Emissions control component-refers to a device designed to control or reduce the emissions of substances from a motor vehicle or motor vehicle engine installed on or incorporated in a motor vehicle or motor vehicle engine in compliance with requirements imposed by the Motor Vehicle Air Pollution Control Act (42 United States Code §1857 et seq) or other applicable law. This term shall include, but not be limited to the following components: air injection system (AIS); catalytic converter; coil; distributor; evaporative canister; exhaust gas recirculation (EGR) valve; fuel filler cap/gas cap; ignition wires; oxygen sensor; positive crank case ventilation (PCV) valve; spark plugs; thermal reactor/thermostatic air cleaner; and hoses, gaskets, belts, clamps, brackets, filters or other accessories and maintenance items related to these emissions control components and systems.

(7) Emissions tune-up-refers to a basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

(8) EPA-refers to the United States Environmental Protection Agency; the federal agency that monitors and protects air and water resources.

(9) Exempt vehicles-refers to vehicles otherwise considered "designated vehicles" that are:

- (A) antique vehicles, as defined by Texas Transportation Code, §502.275;
- (B) circus vehicles, defined as vehicles registered to an entity engaged in the business of a commercial variety show featuring animal acts for public entertainment, and which are licensed by the Texas Board of Health under the Health and Safety Code, Chapter 824.

(C) slow-moving vehicles, as defined by Texas Transportation Code, §547.001; or

(D) motorcycles, as defined by Texas Transportation Code, §502.001.

(10) I/M-refers to Inspection and Maintenance.

(11) Inspection station-refers to an inspection station/facility as defined in the Texas Transportation Code, §548.001.

(12) Inspector-refers to an inspector as defined in the Texas Transportation Code, §548.001.

(13) Loaded mode I/M test-refers to an emissions test that measures the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded mode I/M test equipment specifications shall meet EPA requirements for Acceleration Simulation Modes equipment.

(14) Motorist-refers to a person or other entity responsible for the inspection, repair, maintenance or operation of a motor vehicle, which may include, but is not limited to, owners or lessees.

(15) Non-attainment area-refers to any portion of an air quality control region where any pollutant exceeds the national ambient air quality standards for the pollutant as designated pursuant to the Federal Clean Air Act (FCAA).

(16) Out-of-cycle test-refers to an emissions test not associated with the annual vehicle safety inspection testing cycle.

(17) Person-refers to a human being, a partnership or a corporation that is recognized by law as the subject of rights and duties.

(18) Primarily operated in-refers to the use of a motor vehicle greater than 60 days per calendar year in designated counties. It is presumed that a vehicle is primarily operated in the county in which it is registered; the burden is on the motorist to overcome this presumption by a preponderance of the evidence.

(19) Program area-refers to Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant and Waller counties.

(20) Re-test-refers to a successive vehicle emissions inspection following the failure of an initial emissions test by a vehicle.

(21) Revised Texas I/M SIP-refers to the most current Texas Inspection and Maintenance State Implementation Plan which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted May 29, 1996, in accordance with Chapter 40, Code of Federal Regulations (CFR), Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995.

(22) Safety inspection-refers to a compulsory vehicle inspection performed as required by Texas Transportation Code, Chapter 548, by an official inspection station issued a certificate of appointment by the department.

(23) Safety inspection certificate-refers to an inspection certificate issued under Texas Transportation Code, Chapter 548, after a safety inspection as defined herein.

(24) Tampering-related repairs-refers to repairs to correct tampering modifications, including but not limited to engine modifications, emissions system modifications, or fuel-type modifications disapproved by the TNRCC or the EPA.

(25) Testing cycle-refers to an annual or biennial cycle for which a motor vehicle is subject to a vehicle emissions inspection.

(26) Test-only facilities-refers to inspection stations certified to do emissions testing that are not engaged in repairing, replacing and/or maintaining emissions control components of vehicles.

Acceptable repairs in test-only facilities shall be oil changes, air filter changes, repairs and/or maintenance of non-emissions control components, and the sale of auto convenience items.

(27) Test-and-repair facilities-refers to inspection stations certified to do emissions testing that engage in repairing, replacing and/or maintaining emissions control components of vehicles.

(28) TNRCC-refers to the Texas Natural Resource Conservation Commission.

(29) Two years old-refers to a vehicle upon the expiration of the two-year safety inspection certificate or any time the vehicle is presented for inspection or required to be inspected during the year when the vehicle model year is two years less than the current calendar year (current calendar year minus two years), whichever comes first.

(30) Twenty-four years old-refers to a vehicle when the vehicle model year is 24 years less than the current calendar year (current calendar year minus 24 years).

(31) Uncommon part-refers to a part that takes more than 30 days for expected delivery and installation.

(32) VIR-refers to the Vehicle Inspection Report.

(33) VRF-refers to the Vehicle Repair Form.

(c) Applicability. Beginning July 1, 1996, the requirements of this section and those contained in the Revised Texas I/M SIP shall be applied to motorists, vehicles, vehicle inspection stations and inspectors certified by the department to inspect vehicles, and to Recognized Emissions Repair Facilities of Texas and Recognized Emissions Repair Technicians of Texas, as defined herein.

(d) Control requirements.

(1) In designated counties, in order to be certified by the department as a vehicle inspection station, the vehicle inspection station must be certified by the department to do vehicle emissions testing. Until inspection station recertification in 1997, this provision does not apply to vehicle inspection stations certified by the department as vehicle inspection stations prior to July 1, 1996, in Dallas and Tarrant counties, or prior to January 1, 1997, in Harris and El Paso counties, or to vehicle inspection stations certified by the department as vehicle inspection stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial windshield certificates, commercial trailer certificates.

(2) In designated counties, only department certified inspection stations that are certified by the department to do emissions testing may perform the annual vehicle safety inspection on designated vehicles.

(3) An inspection station in a county not "designated" as a designated county herein shall not inspect a vehicle that is capable of being powered by gasoline, from two years old to and including twenty-four years old and registered in a designated county unless the inspection station is certified by the department to do emissions testing; or unless the motorist presenting the vehicle signs an affidavit on a form provided by the department stating one of the following: (The affidavit will be held by the inspection station for collection by the department.)

(A) the vehicle is not a designated vehicle;

(B) the vehicle no longer qualifies as a designated vehicle; or

(C) the vehicle will not return to a designated county prior to the expiration of the current inspection certificate however immediately upon return to a designated county the vehicle will be reinspected at an inspection station certified to do vehicle emissions testing.

(4) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a DPS certified inspection station that is certified to do vehicle emissions testing. The exceptions to this provision are for:

(A) commercial motor vehicles as defined by the Texas Transportation Code, §548.001, that meet the definition of "designated vehicle" as defined herein. Said "designated" commercial motor vehicles must be emissions tested at a DPS certified inspection station that is certified to do vehicle emissions testing and must have a unique emissions test-only inspection certificate, as authorized by Texas Transportation Code, §548.251, affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker, prior to receiving a commercial motor vehicle safety inspection certificate pursuant to Texas Transportation Code, Chapter 548. The unique emissions test-only inspection certificate must be issued within 15 calendar days of the issuance of the commercial motor vehicle safety inspection certificate. The unique emissions test-only inspection certificate will expire at the same time the newly issued commercial motor vehicle safety inspection certificate expires; and

(B) vehicles presented for inspection by motorists in counties not designated herein that meet the requirements of paragraph (3) (C) of this subsection.

(5) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old to and including 24 years old, presented for the annual vehicle safety inspection in designated counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection.

(6) Vehicles registered in designated counties will be identified by a distinguishing validation registration sticker as determined by the Texas Department of Transportation.

(7) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be passed by the certified inspector, who will thereafter affix to the windshield a unique emissions inspection certificate pursuant to Texas Transportation Code, §548.251. The only valid inspection certificate for designated vehicles shall be a unique emissions inspection certificate issued by the department, unless otherwise provided herein.

(8) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days, not including the date of the emissions test being challenged or questioned.

(9) Federal and State governmental or quasi-governmental agency vehicles that are primarily operated in designated counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP.

(10) Any motorist in a designated county whose designated vehicle has been issued an emissions-related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(11) Inspection certificates issued prior to the effective date of this section shall be valid and shall remain in effect until the expiration date thereof.

(12) A unique emissions test-only inspection certificate expires at the same time the annual vehicle safety inspection certificate it relates to expires.

(13) The department will perform quarterly gas audits on all vehicle exhaust gas analyzers used to perform vehicle emissions tests. If a vehicle exhaust gas analyzer fails the calibration process during the gas audit, the department shall cause the appropriate inspection station to cease vehicle emissions testing with the failing exhaust gas analyzer until all necessary corrections are made and the vehicle exhaust gas analyzer passes the calibration process.

(14) Pursuant to the Revised Texas I/M SIP, the department shall administer and monitor a follow-up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in 40 CFR 51.353(c)(3). A contractor(s) may be used to assist in collecting, reviewing and evaluating program data.

(e) Waivers and extensions. Under this section, the department may issue an emissions testing waiver or time extension to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver or time extension. An emissions testing waiver or a time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test. Applications for emissions testing waivers and time extensions shall be accepted by the department. There are four types of emissions testing waivers and time extensions: Minimum Expenditure Waiver; Individual Vehicle Waiver; Parts Availability Time Extension; and Low-Income Time Extension. The motorist may apply once each testing cycle for the Minimum Expenditure Waiver, Individual Vehicle Waiver, and Parts Availability Time Extension. The motorist may apply every other testing cycle for the Low-Income Time Extension.

(1) Minimum Expenditure Waiver.

(A) Eligibility. A vehicle may be eligible for a Minimum Expenditure Waiver provided that it has:

(i) failed both its initial emissions inspection and re-test; and

(ii) incurred qualified emissions-related repairs, as defined herein, whose cost is equal to or are in excess of the minimum

expenditure amounts, as defined herein for the county in which the vehicle is registered.

(B) **Qualified Emissions-Related Repairs.** Qualified emissions-related repairs are those repairs to emissions control components, including diagnosis, parts and labor, that count toward a minimum expenditure waiver. In order to be considered qualified emissions-related repairs, the repair(s):

(i) must be directly applicable to the cause for the emissions test failure;

(ii) must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;

(iii) must not be tampering-related repairs, as defined herein;

(iv) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(v) after January 1, 1997, for 1981 and newer model year vehicles, must be performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas in order to include the labor cost and/or diagnostic costs. After January 1, 1997, when repairs are not performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas, only the purchase price of parts, applicable to the emissions test failure, qualify as a repair expenditure for the minimum expenditure waiver.

(C) **Minimum expenditure amounts.** The following minimum expenditure amounts are applicable:

(i) In Dallas and Tarrant counties, the minimum expenditure waiver amount shall be \$200 for 1981-and-newer vehicles and \$75 for 1980-and-older vehicles.

(ii) In El Paso and Harris counties, the minimum expenditure waiver amount shall be \$300 in 1997. After January 1, 1998, the minimum expenditure waiver amount in El Paso and Harris counties shall be \$450 (1989 dollars) and shall be adjusted annually thereafter.

(D) **Validity.** A Minimum Expenditure Waiver shall be valid through the end of the twelfth month from the date of issuance.

(E) **Conditions.** The following conditions must be met in order to receive a Minimum Expenditure Waiver:

(i) the vehicle must pass a visual inspection performed by a department representative to insure that the emissions repairs being claimed have actually been performed;

(ii) the diagnosis, parts and labor receipts for the qualified emissions-related repairs must be presented to the department and support that the emissions repairs being claimed have actually been performed; and

(iii) the valid re-test Vehicle Inspection Report (VIR) and valid Vehicle Repair Form (VRF) for the applicant vehicle must be presented to the department. After January 1, 1997, if labor and/or diagnostic charges are being claimed towards the minimum expenditure amount, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas.

(2) **Low-Income Time Extension.** A Low-Income Time Extension may be granted in accordance with the following conditions:

(A) The applicant must supply to the department proof in writing that:

(i) the vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed VIR;

(ii) the vehicle has not been granted a Low-Income Time Extension in the previous testing cycle;

(iii) the applicant is the owner of the vehicle that is the subject of the Low-Income Time Extension; and

(iv) the applicant receives financial assistance from the Texas Department of Human Services due to indigence (subject to approval by the director) or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the *Federal Register*; proof shall be in the form of a federal income tax return or other documentation authorized by the director that the applicant certifies as true and correct.

(B) After a vehicle receives an initial Low-Income Time Extension, the vehicle must pass an emissions test prior to receiving another Low-Income Time Extension.

(3) **Parts Availability Time Extension.** A Parts Availability Time Extension may be granted in accordance with the following conditions:

(A) The applicant must demonstrate to the department:

(i) reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers; and

(ii) emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part, as defined herein.

(B) The applicant shall provide to the department:

(i) an original VIR indicating the vehicle failed the emissions test;

(ii) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address and phone number of parts distributor; and expected delivery and installation date(s). After January 1, 1997, the original itemized document must be prepared by a Recognized Emissions Repair Technician of Texas before a Parts Availability Time Extension can be issued.

(C) A Parts Availability Time Extension is not allowed for tampering-related repairs, as defined herein.

(D) If the vehicle does not pass an emissions re-test prior to the expiration of the Parts Availability Time Extension, the

applicant must provide to the department, adequate documentation that one of the following conditions exists:

(i) the motorist qualifies for a Minimum Expenditure Waiver, Low-Income Time Extension or Individual Vehicle Waiver; or

(ii) the motor vehicle will no longer be operated in the program area, as defined herein.

(E) A vehicle that receives a Parts Availability Time Extension in one testing cycle must have the vehicle repaired and re-tested prior to the expiration of such extension or must qualify for another type of waiver or time extension, in order to be eligible for a Parts Availability Time Extension in the subsequent testing cycle.

(F) The length of a Parts Availability Time Extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts Availability Time Extensions will be issued for either 30, 60 or 90 days.

(G) The department shall issue a unique time extension sticker for Parts Availability Time Extensions.

(4) Individual Vehicle Waiver. If a vehicle has failed an emissions test, a motorist may petition the director for an Individual Vehicle Waiver. Upon demonstration that the motorist has taken every reasonable measure to comply with the requirements of the vehicle emissions I/M program contained in the Revised Texas I/M SIP and such waiver shall have minimal impact on air quality, the director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the Individual Vehicle Waiver each testing cycle.

(f) Prohibitions.

(1) No person may operate or allow to be operated any motor vehicle that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection administered by the department, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a designated vehicle in a designated county unless the vehicle has complied with all applicable vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP, unless otherwise provided for herein.

(3) No person may issue or allow the issuance of a Vehicle Inspection Report (VIR), as authorized by the department, unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by the department and the TNRCC.

(4) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the

vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548 and the Revised Texas I/M SIP.

(5) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Revised Texas I/M SIP and the rules and regulations of the department.

(6) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas or a Recognized Emissions Repair Facility of Texas, as defined in this subsections (h) and (i) of this section, without first obtaining and maintaining recognition by the department.

(g) Violation/Penalties. Pursuant to Texas Transportation Code, §548.601, any person who operates a designated vehicle in a designated county without displaying a valid unique emissions inspection certificate, may be subject to a fine in an amount not to exceed that set out in Texas Transportation Code, §548.604.

(h) Requirements for Recognized Emissions Repair Technicians of Texas. The department will recognize automotive repair technicians that meet the qualifications as set forth herein.

(1) In order to be recognized by the department as a Recognized Emissions Repair Technician of Texas, the technician must:

(A) have a minimum of three years full-time automotive repair service experience;

(B) possess current certification in the following areas based on the following tests offered by the National Institute of Automotive Service Excellence (ASE):

(i) Engine Repair (ASE Test A1);

(ii) Electrical/Electronic Systems (ASE Test A6);

(iii) Engine Performance (ASE Test A8); and

(iv) beginning January 1, 1998, Advanced Engine Performance Specialist (ASE Test L1); and

(C) must be employed by a Recognized Emissions Repair Facility of Texas, as defined herein.

(2) A Recognized Emissions Repair Technician of Texas shall perform the following duties:

(A) complete and certify the VRF form(s); and

(B) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein may result in the department ceasing to recognize the technician.

(i) Requirements for Recognized Emissions Repair Facilities of Texas.

(1) In order to be recognized by the department as a Recognized Emissions Repair Facility of Texas, the facility must:

(A) employ at least one full-time Recognized Emissions Repair Technician of Texas, as described in subsection (h) of this section; and

(B) possess equipment to perform the functionality of the following items:

- (i) ammeter;
- (ii) alternator, regulator or starting circuit tester;
- (iii) battery load tester;
- (iv) compression tester;
- (v) cooling system tester;
- (vi) dwellmeter;
- (vii) engine analyzer;
- (viii) exhaust gas analyzer (with at least hydrocarbon (HC), carbon dioxide (CO₂) measurement capability);
- (ix) fuel pressure/pressure drop tester;
- (x) ohmmeter;
- (xi) propane gas bottle (carburetor lean drop check);
- (xii) repair reference information;
- (xiii) scan tool;
- (xiv) tachometer;
- (xv) timing light;
- (xvi) vacuum/pressure gauge;
- (xvii) vacuum pump; and
- (xviii) volt meter.

(2) A Recognized Emissions Repair Facility of Texas shall:

(A) notify the DPS in writing within 14 days of changes in the facility's technicians' ASE testing status or employment status and the facility's equipment functionality status; and

(B) agree in writing upon application for recognition by the department to maintain compliance with the qualifications enumerated in paragraph (1) of this subsection, in order to maintain recognition by the department.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein, may result in the department ceasing to recognize the facility.

(j) Certified emissions inspection station requirements.

(1) In order to be certified by the department as an emissions inspection station, for purposes of the emissions I/M program, the station must:

(A) be licensed by the department as an official vehicle inspection station;

(B) comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department;

(C) complete all applicable forms and reports as required by the department;

(D) purchase or lease emissions testing equipment that is currently certified by the TNRCC to emissions test vehicles,

or upgrade existing emissions testing equipment to meet the current certification requirements of the TNRCC;

(E) have a designated telephone line dedicated for each vehicle exhaust gas analyzer to be used to perform vehicle emissions tests; and

(F) enter into and maintain a business arrangement with the Texas Datalink contractor to obtain a telecommunications link to the Texas Datalink System Vehicle Identification Database (VID) for each vehicle exhaust gas analyzer to be used to inspect vehicles as described in the Revised Texas I/M SIP.

(2) Failure to comply with these rules may result in the denial, suspension or revocation of an inspection station's certificate of appointment, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(k) Certified emissions inspector requirements.

(1) To qualify as a certified inspector, an individual must:

(A) be licensed by the department as an official vehicle inspector;

(B) must complete the training required for the Vehicle Emissions Inspection Program and receive the department's current inspector's certificate for such training;

(C) must comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department; and

(D) complete all applicable forms and reports as required by the department.

(2) Failure to comply with these rules may result in the denial, suspension or revocation of a certified inspector's certificate, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(l) Inspection and Maintenance Emissions Testing Fees. The fees for emissions testing will be set by the TNRCC. The fee for an emissions test shall provide for one free re-test for each failed initial emissions inspection, provided that the motorist has the re-test performed at the same inspection station where the vehicle originally failed and the re-test is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(m) Audits.

(1) The department is authorized to perform covert and overt audits pertaining to the emissions testing program.

(2) The department may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(n) Authority to publish manuals. The Public Safety Commission authorizes the director of the Department of Public Safety

to promulgate, publish and distribute necessary manuals of instruction for the implementation of the emissions I/M testing program in a manner not inconsistent with these rules. Such manual(s) shall be available for public inspection at reasonable times at offices of the department as designated by the director. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on October 23, 1996. Dudley M. Thomas Director Texas Department of Public Safety 16

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

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

TRD-9615662

Dudley M. Thomas

Director, Texas Department of Public Safety

Texas Department of Public Safety

Earliest possible date of adoption: December 9, 1996

For further information, please call: (512) 424-2890

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §§15.100, 15.300, 15.305, 15.435, 15.441, 15.442, 15.451, 15.460, and 15.503 in its Medicaid Eligibility rule chapter. The purpose of the amendments is to clarify and streamline policy regarding re-establishing eligibility after absence from the U.S.; term insurance; out-of-state homesteads; income from self-employment; application for all other benefits; and payments to victims of Nazi persecution. Changes in rule language is consistent with federal directives.

Terry Trimble, interim commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be that DHS policy will track federal policy and directives. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Judy Coker at (512) 438-3774 in DHS's Long Term Care Division. Comments on the proposal may be submitted to Supervisor, Policy Section, Media and Policy Services-019, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. General Information

40 TAC §15.100

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the Authority to administer federal assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.100. Definitions.

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

Materially Participating - A business owner is determined to be materially participating if he meets any one of the following criteria:

(A) The owner engages in periodic advice and consultation with the tenant, inspection of the production activities, and furnishing of machinery, equipment, livestock, and production expenses.

(B) The owner makes management decisions that affect the success of the enterprise.

(C) The owner performs a specified amount of physical labor to produce the commodities raised.

(D) The owner does not meet the full requirements listed in this definition but his involvement in crop production is nevertheless significant.

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 October 30, 1996.

TRD-9615750

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

Subchapter C. Basic Program Requirements

40 TAC §15.300, §15.305

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the Authority to administer federal assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.300. United States Citizenship and Residence Requirements.

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

(e) Clients who are outside the U.S. for an entire calendar month lose their eligibility for all the months they are gone. [Clients who have been outside the U.S. for 30 consecutive days or more must again live in the U.S. for at least 30 consecutive days to reestablish eligibility for medical assistance.]

(f) The period of absence begins with the day after the client's departure from the U.S.

(g) If otherwise eligible, a client whose eligibility has been denied because of absence from the U.S. can be recertified:

(1) effective with the day following the 30th day of continuous presence in the U.S. after the client's return if the time outside the U.S. was 30 consecutive days or more; or

(2) effective with the day the client returned to the U.S., if the time outside the U.S. was a full calendar month, but less than the 30 consecutive days (calendar month of February only).

§15.305. *Eligibility Requirements for the Aged, Blind, or Disabled.*

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

(e) To be eligible, a client must file:

(1) (No change.)

(2) for all other cash benefits payable at the earliest month and in the highest amount available based on the earliest month.

(A) When the client can select the month in which payments begin, whether retroactively or prospectively, the client must select the earliest month regardless of the impact on other benefits from the program. Election of a later month of entitlement to qualify for higher ongoing benefits or protect benefits paid to other people is cause for denial. The client is ineligible until such time as the election is changed or the option for change is no longer available.

(B) Certain programs permit an individual to elect survivor's benefits for dependents by electing a reduced retirement benefit. The client is advised that he must elect the higher current benefit. Election of the lower benefit will result in Medicaid ineligibility until such time as the election is changed or the option for change is no longer available.

(C) There are some programs which require a spouse to file a waiver of rights to a survivor's benefit. When a spouse refuses to sign a waiver, the client meets the filing requirement when he takes the reduced retirement benefit.

(D) When a client can choose payment of another benefit as a lump sum or annuity, he must choose the annuity.

(3)[(2)] a claim for the benefits within 30 days of receiving written notification of potential eligibility for the benefits.

(f)-(j) (No change.)

(k) Subsection (e)(2) does not have retroactive effect as to a particular applicant. Irrevocable choices and selections of benefits made before a person applies for assistance to which this subsection pertains, do not affect eligibility under this subsection. Subsection (e)(2) does not apply to irrevocable benefit choices and selections made before application for assistance under the programs to which this section applies.

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 October 30, 1996.

TRD-9615751

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

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Subchapter D. Resources

40 TAC §§15.435, 15.441, 15.442

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the Authority to administer federal assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.435. *Liquid Resources.*

(a)-(n) (No change.)

(o) The Texas Department of Human Services (DHS) excludes from countable resources the following payments:

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

(4) payments from any source made to individuals because of their status as victims of Nazi persecution.

(p) (No change.)

§15.441. *Real Property.*

(a) Home. The value of a home that is a client's or his spouse's principal place of residence is not a resource of the client or spouse.

(1) (No change.)

(2) home as the principal place of residence. Only one place may be established as the client's principal place of residence. If a client lives in more than one place or owns more than one residence, he must designate one as his principal place of residence. If the client is unable to make this decision, the department bases the determination on statements from the client's guardian or responsible party, or on the address the client uses on his voter registration, federal benefits, or federal income tax returns. With the exceptions specified in paragraph (9) of this subsection, a client who applies for and receives Medicaid benefits in Texas is not allowed to exclude a home in another state. Otherwise, if the client considers his home in another state to be his principal place of residence, he is not a Texas resident, and he must apply for assistance in his home state. [A client who applies for and receives Medicaid benefits in Texas is not allowed to exclude a home in another state. If the client considers his home in another state to be his principal place of residence, he is not a Texas resident, and he must apply for assistance in his home state.]

(3)-(8) (No change.)

(9) community spouse living in another state.

(A) If the community spouse lives in another state in a house that the client claims is not his homestead, to determine the protected resource amount and initial eligibility, the department excludes the out-of-state property as a part of resources totally excluded regardless of value. If the client still has an ownership interest in the property at the first annual review, the department considers the value of the property a countable resource that is real property. This situation does not affect residency requirements. As long as the institutionalized spouse intends to remain in the state where he is institutionalized, he is considered a resident.

(B) If the community spouse lives in another state in a house that is the client's homestead, the home is excluded in the resource assessment and throughout the initial eligibility period of 12 months. If the client still has an ownership interest in the property at the first annual review, the home is a countable resource. If the community spouse is not living in the out-of-state home, he must sign a statement of intent to return for the home to be excluded for the resource assessment and initial eligibility period of 12 months.

(C) If there is no community spouse, the out-of-state home property is a countable resource unless it is placed for sale. If there is no community spouse, the home is not placed for sale, and the client considers his home in another state to be his principal place of residence, the client is not a Texas resident; and he must apply for assistance in his home state. If the client does not consider the out-of-state home as his principal place of residence, it is a countable resource.

[(9) community spouse living in another state. If the community spouse lives in another state in a house that the client claims is not his homestead, for the protected resource amount and initial eligibility determination, the department excludes the out-of-state property as a part of resources totally excluded regardless of value. If the client still has an ownership interest in the property at the first annual review, the value of the property is a countable resource as real property. This situation does not affect residency requirements. As long as the institutionalized spouse intends to remain in the state where he is institutionalized, he is considered a resident.]

(10) (No change.)

(b) (No change.)

§15.442. *Personal Property.*

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

(d) Term and burial insurance. Term insurance and burial insurance are not resources.

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

(3) If a term insurance policy has been purchased by a life insurance company and premiums are used to purchase separate whole life coverage, the whole life coverage is subject to the policy as described in subsection (c) of this section.

(4) If the term insurance policy is a participating life insurance policy, any dividend accumulation at interest is a countable resource.

(e)-(g) (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 October 30, 1996.

TRD-9615752

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

Subchapter E. Income

40 TAC §15.451, §15.460

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the Authority to administer federal assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.451. *Sources of Earned Income.*

Earned income may be in cash or in-kind. Payment of earned income may be:

(1) (No change.)

(2) net earnings from self-employment.

(A) If an individual is both employed and self-employed, his earned income consists of his wages plus net earnings from self-employment.

(B) For earned income to be considered self-employment, either the client or spouse must be actively involved or materially participating in producing the income.

(C) Net earnings (gross income less allowable deductions) are used in budgeting. Net earnings from self-employment also include any profit or loss incurred in partnership agreements (within a self-employment related context). Verified net losses from self-employment can be deducted from other earned income received in the same year as the loss was incurred. In a couple case, the loss can be deducted from either spouse's earned income, regardless of which spouse incurred the loss. Losses cannot be deducted from unearned income or carried over from a previous period.

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

§15.460. *Income Exemptions.*

(a) (No change.)

(b) The Texas Department of Human Services exempts income that a client receives from any of the following sources:

(1)-(33) (No change.)

(34) payments from any source made to individuals because of their status as victims of Nazi persecution.

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 October 30, 1996.

TRD-9615753

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

Subchapter F. Budget and Payment Plans

40 TAC §15.503

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the Authority to administer federal assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.503. Protection of Spousal Income and Resources.

(a) (No change.)

(b) Effective September 30, 1989, Public Law 100-360 provides for the protection of resources for the community spouse when the other spouse is institutionalized. The resource provisions under this law apply to people with continuous periods of institutionalization beginning September 30, 1989. People living in nursing facilities on September 29, 1989, must be discharged for 30 consecutive days and readmitted before these special resource provisions apply.

(1) When one spouse (in a couple) enters a medical care facility and is likely to remain [Title-XIX-certified nursing facility or institution with the intention of remaining] for 30 consecutive days, the couple may request an assessment of their combined countable resources. The purpose of the assessment is to determine a protected resource amount (PRA), which is that portion of total resources reserved for the community spouse and deducted from the couple's combined resources in determining eligibility. The assessment may be requested at any time from the date of institutionalization to the date of application for Medicaid, even if there are no plans to file an application. Therefore, an assessment may be completed months or years before the filing of an application.

(2)-(5) (No change.)

(c)-(i) (No change.)

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

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

TRD-9615754

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

Subchapter C. Basic Program Requirements

40 TAC §15.315, §15.316

The Texas Department of Human Services (DHS) proposes an amendment to §15.315 and new §15.316, concerning basic program requirements, in its Medicaid Eligibility chapter. The purpose of the amendment is to ensure proper allocation of resources to the neediest individuals by incorporating the nursing facility risk criteria specified in the Resident Assessment Instrument- Home Care Assessment. The proposed risk criteria include prior nursing facility placement, functional deficits in the activities of daily living, certain neurological diagnoses, urinary incontinence, recent falls, and significant functional decline.

Also in this issue of the *Texas Register*, DHS is proposing similar policy changes in Chapters 19 and 48 of this title.

Terry Trimble, interim commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to target individuals who may be at risk for institutionalization, ensuring proper allocation of resources to the neediest individuals. There will be no effect on small businesses. There is no anticipated economic cost to people who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-032, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment and new section are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new section implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§15.315. Preadmission Screening and Annual Resident Review (PASARR).

[(a) The Omnibus Budget Reconciliation Act (OBRA) of 1987 requires that all individuals (including private-pay patients) be screened for mental illness, mental retardation, or related conditions before admission to Medicaid-certified nursing facilities and the Community Based Alternatives waiver program. If these conditions exist and the Texas Department of Human Services' (DHS's) regional Long Term Care assessment staff determine that the client does not meet medical necessity criteria for nursing facility care, DHS cannot

certify the client as Medicaid-eligible. PASARR screening applies to all nursing facility and Community Based Alternatives waiver admissions. PASARR does not apply to the ICF-MR Program.]

(a)[(b)] If the client has a known condition of mental illness, mental retardation, or developmental disability, DHS cannot certify the client unless the client meets all eligibility criteria and DHS's regional Long Term Care assessment staff determine that the client meets medical necessity criteria for nursing facility care.

[(c) In sites, as designated by the Commissioner of Human Services, for the Long-Term Care Assessment pilot project, the assessment is the first step in obtaining a PASARR decision for long-term care services.]

(b)[(d)] If a Medical Assistance Only (MAO) case in a private Title XIX facility is denied solely because of no level of care and medical necessity determination, refer the client to Social Security Administration (SSA) if available income is less than the Supplemental Security Income (SSI)-full federal benefit rate. Refer SSI clients who are denied a level of care and medical necessity determination to SSA for rebudgeting to the full federal benefit rate.

(c)[(e)] A client may continue to be Medicaid-eligible as long as the client meets all eligibility criteria and:

- (1) has a diagnosis of mental illness, mental retardation, or related condition,
- (2) no longer meets the medical necessity criteria, and
- (3) has lived in a nursing facility for 30 months before the date medical necessity is denied and chooses to remain in the facility.

(d)[(f)] If the client meets all the eligibility requirements listed in subsection (c)[(e)] of this section, but has been in the facility for less than 30 months, regular Medicaid denial procedures apply.

§15.316. Risk Assessment Criteria.

(a) To be eligible for the Community Based Alternatives (CBA) Program or nursing facility care, a client must meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument (RAI)-Home Care Assessment for Nursing Home Risk, as revised in April 1996 and summarized as follows:

- (1) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;
- (2) has a functional decline in the past 90 days;
- (3) has a history of a fall two or more times in past 180 days;
- (4) has a neurological diagnosis of Alzheimer's, Head Trauma, Multiple Sclerosis, Parkinsonism, or Dementia;
- (5) has a history of nursing facility placement within the last five years;
- (6) has multiple episodes of urine incontinence daily; and
- (7) goes out of one's residence one or fewer days a week.

(b) Clients transferring to CBA from a nursing facility or the Medically Dependent Children's Program are exempt from the risk assessment.

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 October 30, 1996.

TRD-9615788

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

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Chapter 19. Nursing Facility Requirements for
Licensure and Medicaid Certification

Subchapter Y. Medical Review and Re-evaluation
40 TAC §19.2409

The Texas Department of Human Services (DHS) proposes an amendment to §19.2409, concerning general qualifications for at-risk assessments and medical necessity determinations, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to ensure proper allocation of resources to the neediest individuals by incorporating the nursing facility risk criteria specified in the Resident Assessment Instrument Home Care Assessment. The proposed risk criteria include prior nursing facility placement, functional deficits in the activities of daily living, certain neurological diagnoses, urinary incontinence, recent falls, and significant functional decline.

Also in this issue of the *Texas Register*, DHS is proposing similar policy changes in Chapters 15 and 48 of this title.

Terry Trimble, interim commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Trimble also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to target individuals who may be at risk for institutionalization, ensuring proper allocation of resources to the neediest individuals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-043, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.2409. *General Qualifications for At-Risk Assessments and Medical Necessity Determinations.*

(a) To be eligible for the Medicaid (Title XIX) Long-term Care program, an individual must meet two or more of the following criteria for nursing facility risk, as specified in the Resident Assessment Instrument-Home Care Assessment for Nursing Home Risk, as revised in April 1996 and summarized as follows:

- (1) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;
 - (2) has a functional decline in the past 90 days;
 - (3) has a history of a fall two or more times in past 180 days;
 - (4) has a neurological diagnosis of Alzheimer's, head trauma, multiple sclerosis, Parkinsonism, or dementia;
 - (5) has a history of nursing facility placement within the last five years;
 - (6) has multiple episodes of urine incontinence daily;
- or
- (7) goes out of one's residence one or fewer days a week.

(b) Medical necessity (MN) is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the general qualifications for an MN determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this subsection [section].

(1) The individual must demonstrate a medical disorder or disease or both, with a related impairment that:

(A) limits his ability to recognize problems, changes in his condition, and the need for or side effects of prescribed medications;

(B) is of sufficient seriousness that his needs exceed the routine care which may be given by an untrained person; and

(C) requires nurses' supervision, assessment, planning, and intervention that are available only in an institution.

(2) The individual must require medical/nursing services that:

(A) are ordered by and remain under the supervision of a physician;

(B) are dependent upon the individual's documented medical, physical, and/or functional disorders, conditions, or impairments;

(C) require the skills of registered or licensed vocational nurses;

(D) are provided either directly by or under the supervision of licensed nurses in an institutional setting; and

(E) are required on a regular basis.

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 October 30, 1996.

TRD-9615789

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

Chapter 48. Community Care for Aged and Disabled

1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

40 TAC §48.6003

The Texas Department of Human Services (DHS) proposes an amendment to §48.6003, concerning client eligibility criteria, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to ensure proper allocation of resources to the neediest individuals by incorporating the nursing facility risk criteria specified in the Resident Assessment Instrument Home Care Assessment. The proposed risk criteria include prior nursing facility placement, functional deficits in the activities of daily living, certain neurological diagnoses, urinary incontinence, recent falls, and significant functional decline.

Also in this issue of the *Texas Register*, DHS is proposing similar policy changes in Chapters 15 and 19 of this title.

Terry Trimble, interim commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Trimble also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to target individuals who may be at risk for institutionalization, ensuring proper allocation of resources to the neediest individuals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Anita Anderson at (512) 438-3195 in DHS's Community Care Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-043, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code, §531.021, which provides

the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§48.6003. *Client Eligibility Criteria.*

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

(1)-(9) (No change.)

(10) meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument-Home Care Assessment for Nursing Home Risk as revised in April 1996 and summarized as follows:

(A) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;

(B) has a functional decline in the past 90 days;

(C) has a history of a fall two or more times in past 180 days;

(D) has a neurological diagnosis of Alzheimer's, Head Trauma, Multiple Sclerosis, Parkinsonism, or Dementia;

(E) has a history of nursing facility placement within the last five years;

(F) has multiple episodes of urine incontinence daily; and

(G) goes out of one's residence one or fewer days a week.

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

(d) The nursing facility risk criteria will be applied at the time of the first annual re-assessment for current Community Based Alternatives Program participants and at the time of initial enrollment for all new applicants.

(e) Individuals transferring from a nursing facility or the Medically Dependent Children's Program are exempt from subsection (a)(9) of this section.

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

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

TRD-9615763

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1997

For further information, please call: (512) 438-3765

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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 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter H. Approval of Distance Learning for Public Colleges and Universities

19 TAC §5.156

The Texas Higher Education Coordinating Board adopts an amendment to §5.156, concerning Approval of Distance Learning for Public Colleges and Universities (Procedures for Review and Approval of Lower-Division Distance Learning) without changes to the proposed text as published in the August 27, 1996, issue of the *Texas Register* (21 TexReg 8074).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code, §61.051 and §130.086 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities

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 October 28, 1996.

TRD-9615721

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: November 19, 1996

Proposal publication date: August 27, 1996

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

Chapter 9. Public Junior Colleges

Subchapter J. Approval of Postsecondary Technical and Vocational Courses for State Approp-

priations to Public Community Colleges and Texas State Technical Institutes

19 TAC §9.214

The Texas Higher Education Coordinating Board adopts an amendment to §9.214, concerning Approval of Postsecondary Technical and Vocational Courses for State Appropriations to Public Community Colleges and Texas State Technical Institutes (Approval) without changes to the proposed text as published in the August 27, 1996, issue of the *Texas Register* (21 TexReg 8075)

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code, §§130.003(b), 61.063, and 135.54 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Postsecondary Technical and Vocational Courses for State Appropriations to Public Community Colleges and Texas State Technical Institutes

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 October 28, 1996.

TRD-9615722

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: November 19, 1996

Proposal publication date: August 27, 1996

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

TITLE 19. EDUCATION

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Hearings-Contested Cases

22 TAC §131.224

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.224, concerning complaints, without changes to the proposed text as published in the September 13, 1996, issue of the *Texas Register* (21 TexReg 8805).

The amendment corrects the grammatical error in subsection (b).

The rule provides clarification that the board must give notice by personal service or by registered or certified mail to an applicant prior to board action if an application for initial registration is proposed for rejection based on prior criminal convictions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 October 28, 1996.

TRD-9615663

John R. Speed, P.E.

Executive Director

Texas State Board of Registration for Professional Engineers

Effective date: November 18, 1996

Proposal publication date: September 13, 1996

For further information, please call: (512) 440-7723

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§305.50, 305.172, and 305.572, and new §305.150, concerning consolidated permits. Section 305.150 is adopted with changes to the proposed text as published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7343). Sections 305.50, 305.172, and 305.572 are adopted without changes and will not be republished.

The primary purpose of the amendments and new section is to ensure that Texas' state rules are equivalent to the federal regulations after which they are patterned, either by incorporating the federal regulations into the state rules by reference or by introducing language into the state rules that is intended to be equivalent to the corresponding federal regulations. The rules also include typographical and administrative revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations, and to clarify the number of copies of certain permit applications that must be submitted.

The amendments and new section specifically address changes to the federal hazardous waste regulations that became effective

between July 1, 1993, and June 30, 1994, under the authority of the federal Resource Conservation and Recovery Act (RCRA). By establishing equivalency with these federal regulations, the State of Texas will maintain equivalency with the federal hazardous waste program, thus enabling the state to retain authorization to operate aspects of the federal program in lieu of the United States Environmental Protection Agency. The resultant benefit will be a reduced cost to participants in the hazardous waste regulatory program because state hazardous waste requirements will not be duplicated by the requirements of the federal hazardous waste program.

No comments were received regarding adoption of the amendments or new language.

Section 305.150 is adopted with changes to include a date and *Federal Register* citation for the incorporation by reference of 40 Code of Federal Regulations §260.11.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The rules are also intended to clarify the number of copies to be submitted with certain permit applications and to make administrative corrections to certain language within the rules. The rules will substantially advance this stated purpose by adopting the aforementioned federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. The rules will also specify the number of copies to be submitted with certain permit applications and will make administrative corrections within the rules. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, and the subject regulations do not affect a landowners rights in private real property. Also, the following exception to the application of Texas Government Code, Chapter 2007 applies to these rules: §2007.003(b)(4)—an action that is reasonably taken to fulfill an obligation mandated by federal law.

Subchapter C. Application for Permit

30 TAC §305.50

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

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

TRD-9615764

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

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Subchapter G. Additional Conditions for Solid
Waste Storage, Processing, or Disposal Permits

30 TAC §305.150

The new section is adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§305.150. *Incorporation of References.*

When used in this chapter (relating to Consolidated Permits), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 2, 1994, at 59 FedReg 28484.

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 October 30, 1996.

TRD-9615765

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

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Subchapter I. Hazardous Waste Incinerator Permits

30 TAC §305.172

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

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

TRD-9615766

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

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Subchapter Q. Permits for Boilers and Industrial
Furnances Burning Hazardous Waste

30 TAC §305.572

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

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

TRD-9615767

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

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Chapter 335. Industrial Solid Waste and Municipal
Hazardous Waste

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.1, 335.2, 335.9, 335.15, 335.22, 335.23, 335.24, 335.29, 335.30, 335.76, 335.112, 335.125, 335.152, 335.175, and 335.221, and new §335.31, concerning industrial solid waste and municipal hazardous waste. Sections 335.24, 335.29, 335.31, and 335.76 are adopted with changes to the proposed text as published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7348). Sections 335.1, 335.2, 335.9, 335.15, 335.22, 335.23, 335.30, 335.112, 335.125, 335.152, 335.175, and 335.221 are adopted without changes and will not be republished.

The primary purpose of the amendments and new section is to ensure that Texas' state rules are equivalent to the federal regulations after which they are patterned, either by

incorporating the federal regulations into the state rules by reference or by introducing language into the state rules that is intended to be equivalent to the corresponding federal regulations. Another purpose of the rules is to reinstate an inadvertently deleted subsection in the rules requiring reports for certain wastes received without the required manifests or shipping papers. The rules also include typographical revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations and to delete a series of cross-references that were inadvertently repeated in the rules.

The amendments and new section specifically address changes to the federal hazardous waste regulations that became effective between July 1, 1993, and June 30, 1994, under the authority of the federal Resource Conservation and Recovery Act (RCRA). By establishing equivalency with these federal regulations, the State of Texas will maintain equivalency with the federal hazardous waste program, thus enabling the state to retain authorization to operate aspects of the federal program in lieu of the United States Environmental Protection Agency. The resultant benefit will be a reduced cost to participants in the hazardous waste regulatory program because state hazardous waste requirements will not be duplicated by the requirements of the federal hazardous waste program.

No comments were received regarding the adoption of the amendments or new section.

Sections 335.24, 335.29, and 335.76 are adopted with changes to make typographical corrections, and §335.31 is adopted with changes to include a date and *Federal Register* citation for the incorporation by reference of 40 Code of Federal Regulations §260.11.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The rules also include typographical and administrative revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations, and to correct other technical errors within the rules. The rules will substantially advance this stated purpose by adopting the aforementioned federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. The rules will also make administrative corrections within the rules. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, and the subject regulations do not affect a landowners rights in private real property. Also, the following exception to the application of Texas Government Code Chapter 2007 applies to these rules: §2007.003(b)(4)—an action that is reasonably taken to fulfill an obligation mandated by federal law.

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

30 TAC §§335.1, 335.2, 335.9, 335.15, 335.22-335.24, 335.29-335.31

The amendments and new section are adopted under Texas Water Code §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§335.24. *Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.*

(a) (No change.)

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings):

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

(c) The following recyclable materials are not subject to regulation under Subchapters (B)-(I) and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions) or Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter

in the regulations contained in 40 CFR §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) (No change.)

(2)-(5) (No change.)

(6) the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11; and

(7) petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings), and the notification requirements under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) (No change.)

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsection (c)(1) and (3)-(7) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) and (3) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §§335.10 - 335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1)-(9) (No change.)

(i) Except as provided in the Solid Waste Disposal Act, Health and Safety Code §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1)-(12) (No change.)

§335.29. *Adoption of Appendices by Reference.*

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) (No change.)

(2) Appendix II-Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993, at 58 FedReg 46040);

(3) Appendix III—Chemical Analysis Test Methods (as amended through August 31, 1993, at 58 FedReg 46040);

(4) (No change.)

(5) Appendix VIII—Hazardous Constituents (as amended through June 20, 1994, at 59 FedReg 31551); and

(6) Appendix IX—Wastes Excluded Under §260.20 and §260.22.

§335.31. Incorporation of References.

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 2, 1994, at 59 FedReg 28484.

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 October 30, 1996.

TRD-9615768

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

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Subchapter C. Standards Applicable to Generators of Hazardous Waste

30 TAC §335.76

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986, provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of

Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, which are in effect as of November 8, 1986, has been provided;

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

(5) the primary exporter complies with the manifest requirements of §335.10(a)-(d) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A)-(C) (No change.)

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste): "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) (No change.)

(F) in lieu of the requirements of §335.10(a) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) notify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or

(ii)-(iii) (No change.)

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

(c) (No change.)

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for the manifest except that:

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

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), which are in effect as of November 8, 1986.

(g) Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

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 October 30, 1996.

TRD-9615769

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

◆ ◆ ◆
Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §335.112, §335.125

The amendments are adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

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

TRD-9615762

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

◆ ◆ ◆
Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §335.152, §335.175

The amendments are adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

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

TRD-9615761

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

◆ ◆ ◆
Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

30 TAC §335.221

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorizes the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

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

TRD-9615760

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: November 20, 1996

Proposal publication date: August 6, 1996

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing-Payroll

34 TAC §5.41

The Comptroller of Public Accounts adopts the repeal to §5.41, concerning payroll voucher requirements, without changes to the proposed text as published in the September 13, 1996, issue of the *Texas Register* (21 TexReg 8812).

The section is being repealed so that a substantially revised section may be adopted.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §§403.011, 403.071, 403.078, and 2101.035-2101.036. These statutes generally authorize the comptroller to design, implement, operate, and maintain the uniform statewide accounting system, the human resource information system, and the uniform statewide payroll/personnel system. These statutes also authorize the comptroller to adopt rules for the effective operation of those systems. Finally, these statutes require a state agency to submit payroll vouchers to the comptroller in the form and with the information required by the comptroller.

The repeal implements the Government Code, §§403.011, 403.072, 403.078, and 2101.035.

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 October 29, 1996.

TRD-9615700

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: November 19, 1996

Proposal publication date: September 13, 1996

For further information, please call: (512) 463-4062

◆ ◆ ◆

The Comptroller of Public Accounts adopts new §5.41, concerning payroll requirements, without changes to the proposed text as published in the September 13, 1996, issue of the *Texas Register* (21 TexReg 8812). The new section replaces §5.41 that is being repealed.

The new section is necessary because of the continuing evolution, improvement, and expansion of the human resource information system and the uniform statewide payroll/personnel system. These developments have resulted in changes to the reports that state agencies file with the comptroller and to the procedures those agencies follow when requesting payment of compensation to their officers and employees.

The new section also is necessary because the Texas legislature and the United States Congress have recently authorized

or mandated new payroll deductions from the compensation of state officers and employees.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, §§403.011, 403.071, 403.078, and 2101.035-2101.036. These statutes generally authorize the comptroller to design, implement, operate, and maintain the uniform statewide accounting system, the human resource information system, and the uniform statewide payroll/personnel system. These statutes also authorize the comptroller to adopt rules for the effective operation of those systems. Finally, these statutes require a state agency to submit payroll vouchers to the comptroller in the form and with the information required by the comptroller.

The new section implements the Government Code, §§403.011, 403.072, 403.078, and 2101.035.

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 October 29, 1996.

TRD-9615702

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: November 19, 1996

Proposal publication date: September 13, 1996

For further information, please call: (512) 463-4062

◆ ◆ ◆ 34 TAC §§5.42-5.44

The Comptroller of Public Accounts adopts the repeal of §§5.42-5.44, concerning claims processing-payroll, without changes to the proposed text as published in the September 13, 1996, issue of the *Texas Register* (21 TexReg 8819).

The sections are being repealed because they are no longer necessary in light of the proposed adoption of new §5.41, concerning Payroll Requirements.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, §§403.011, 403.071, 403.078, and 2101.035-2101.036. These statutes generally authorize the comptroller to design, implement, operate, and maintain the uniform statewide accounting system, the human resource information system, and the uniform statewide payroll/personnel system. These statutes also authorize the comptroller to adopt rules for the effective operation of those systems. Finally, these statutes require a state agency to submit payroll vouchers to the comptroller in the form and with the information required by the comptroller.

The repeals implement the Government Code, §§403.011, 403.072, 403.078, and 2101.035.

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 October 29, 1996.

TRD-9615701
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: November 19, 1996
Proposal publication date: September 13, 1996
For further information, please call: (512) 463-4062

◆ ◆ ◆
34 TAC §5.47

The Comptroller of Public Accounts adopts an amendment to §5.47, concerning deductions for payments to credit unions, without changes to the proposed text as published in the August 6, 1996, issue of the *Texas Register* (21 TexReg 7357).

The amendments are necessary for the following reasons.

First, House Bill 2527, 74th Legislature, 1995, made it possible for a foreign credit union to be authorized to do business in this state. If a foreign credit union has obtained that authorization, then it is eligible under the Government Code, §§659.101 and 659.103-659.109, to participate in the credit union payroll deduction program. Section 5.47 is being amended to recognize this eligibility.

Second, Senate Bill 959, 74th Legislature, 1995, non-substantively recodified and transferred the statutory authorization for the credit union payroll deduction program to the Government Code, §§659.101 and 659.103-659.109. The recodification resulted in a non-substantive change to the definition of "state agency." Section 5.47 is being amended to reflect this change.

Third, the reference to "Texas" in the existing definition of "state employee" is redundant given that definition's reference to the definition of "state agency." Therefore, the redundancy is being deleted.

Fourth, subsection (f)(5)'s prohibition of a deduction from salary or wages paid before June 1, 1995, has been fulfilled and is no longer necessary. Therefore, the prohibition is being deleted.

Fifth, subsection (j)(1)(A) requires a state agency to notify a participating credit union about the agency's cancellation of a payment of salary or wages. Subsection (j)(1)(A) currently applies only to salary or wages that are included in a monthly detail report. Subsection (l)(3)(H) has a similar requirement for salary or wages that are included in an additional detail report. To promote simplicity, these requirements are being consolidated in subsection (j)(1)(A), without substantive change.

Sixth, subsection (l)(2)(D) and (l)(3)(D) requires a state agency to submit its monthly and additional detail reports to participating credit unions by hand or through an overnight delivery service. The requirement is being changed to allow state agencies to submit the reports by facsimile in addition to the existing methods. This change will enable state agencies to avoid the high cost of overnight delivery services.

The amendments are adopted under the Government Code, §659.105, which requires that a credit union payroll deduction be made in the form and manner prescribed by the comptroller.

No comments were received regarding adoption of the amendment.

The amendments implement the Government Code, §§659.101 and 659.103-659.109.

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 October 29, 1996.

TRD-9615651
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: November 19, 1996
Proposal publication date: September 13, 1996
For further information, please call: (512) 463-4062

◆ ◆ ◆
Claims Processing-Purchase Vouchers

34 TAC §5.51

The Comptroller of Public Accounts adopts the repeal to §5.51, concerning definitions, without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8421).

The section is being repealed so that a substantially revised section may be adopted.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §§403.011, 403.071, 403.078, 2101.035, and 2103.004. These statutes generally require a state agency to submit payment vouchers to the comptroller in the form and with the information required by the comptroller. The statutes also require the comptroller to audit those vouchers on a pre-payment or post-payment basis. Finally, the statutes authorize the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

The repeal implements the Government Code, §§403.011, 403.071, 403.078, 2101.035, and 2103.004.

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 October 29, 1996.

TRD-9615703
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Effective date: November 19, 1996
Proposal publication date: September 3, 1996
For further information, please call: (512) 463-4028

◆ ◆ ◆
The Comptroller of Public Accounts adopts new §5.51, concerning requirements for purchase documents, without changes to

the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8421).

The new section is necessary for the following reasons.

First, the implementation of the uniform statewide accounting system (USAS) has changed the terminology used about purchase vouchers. Those vouchers are now called purchase documents and purchase transactions in USAS. The new section will reflect the current terminology.

Second, the implementation of USAS has resulted in many changes to the formatting and content requirements that purchase vouchers must satisfy before they are processed by the comptroller. The new section will set forth those requirements.

Third, the implementation of post-payment audits of purchase vouchers by the comptroller has made it advisable for state agencies to retain supporting documentation for those vouchers until the audits occur. The new section will contain the requirements for the documentation.

One comment was received about the proposed text.

The Texas Department of Commerce asked whether the comptroller would object to state agencies maintaining their supporting documentation off-site. Proposed §5.51(e)(4) would require a state agency to maintain supporting documentation for a purchase document in agency files. The proposal does not have any requirements for where those files must be located. Therefore, so long as an agency is able to comply with a request from the comptroller for supporting documentation according to proposed §5.51(e)(2) and (6), the files may be located anywhere deemed advisable by the agency.

The new section is adopted under the Government Code, §§403.011, 403.071, 403.078, 2101.035, and 2103.004. These statutes generally require a state agency to submit payment vouchers to the comptroller in the form and with the information required by the comptroller. The statutes also require the comptroller to audit those vouchers on a pre-payment or post-payment basis. Finally, the statutes authorize the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

The new section implements the Government Code, §§403.011, 403.071, 403.078, 2101.035, and 2103.004.

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 October 29, 1996.

TRD-9615704

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: November 19, 1996

Proposal publication date: September 3, 1996

For further information, please call: (512) 463-4028

◆ ◆ ◆
Claims Processing-General Requirements

34 TAC §5.61

The Comptroller of Public Accounts adopts the repeal of §5.61, concerning general requirements, without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8424).

The section is being repealed so that a substantially revised section may be adopted.

The repeal is adopted under the Government Code, §2103.032, which authorizes the comptroller to establish by rule a system for state agencies to submit and approve their vouchers electronically, and under the Government Code, §2101.035, which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

The repeal implements the Government Code, §§403.071, 2101.035, 2103.004, 2103.032, and 2155.322-2155.323.

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 October 29, 1996.

TRD-9615715

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: November 19, 1996

Proposal publication date: September 3, 1996

For further information, please call: (512) 463-4028

◆ ◆ ◆
The Comptroller of Public Accounts adopts new §5.61, concerning approval and certification of payment documents, without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8424).

The new section is necessary for the following reasons.

First, the implementation of the uniform statewide accounting system (USAS) has made it technically feasible for state agencies to provide electronic approvals of their payment vouchers. State law authorizes the comptroller to adopt rules to provide for electronic approvals if the comptroller determines that electronic approvals will facilitate the operation and administration of USAS and if the degree of security provided by electronic approvals is at least equal to the degree of security provided by non-electronic approvals. The comptroller has determined that the new section will satisfy both of these conditions.

Second, the legal requirements for the non-electronic approval of payment vouchers have changed since §5.61 was last adopted in 1976. The new version of §5.61 will authorize non-electronic approvals in certain circumstances and in compliance with the new legal requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, §2103.032, which authorizes the comptroller to establish by rule a system for state agencies to submit and approve their vouchers electronically, and under the Government Code, §2101.035, which authorizes the comptroller to adopt rules

for the effective operation of the uniform statewide accounting system.

The new section implements the Government Code, §§403.071, 2101.035, 2103.004, 2103.032, and 2155.322-2155.323.

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 October 29, 1996.

TRD-9615716

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: November 19, 1996

Proposal publication date: September 3, 1996

For further information, please call: (512) 463-4028

Deferred Compensation

34 TAC §§5.111-5.123

The Comptroller of Public Accounts adopts the repeal of §§5.111-5.123, concerning deferred compensation - Internal Revenue Code, §457 plan, without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8432).

The sections are being repealed formally because they still appear in the Texas Administrative Code despite their transfer to the Employees Retirement System of Texas (ERS) in 1991. Senate Bill 897, 71st Legislature, 1989, transferred the authority to administer the state's deferred compensation programs to ERS. The sections being repealed have had no legal effect since the effective date of that transfer.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Senate Bill 897, 71st Legislature, 1989, which transferred the authority to administer the state's deferred compensation programs from the comptroller of public accounts to ERS.

The repeals implement Senate Bill 897, 71st Legislature, 1989.

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 October 29, 1996.

TRD-9615717

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: November 19, 1996

Proposal publication date: September 3, 1996

For further information, please call: (512) 463-4028

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Vehicle Emissions Inspection and Maintenance Program

37 TAC §23.91, §23.92

The Texas Department of Public Safety adopts amendments to §23.91 and §23.92, concerning vehicle inspection, without changes to the proposed text as published in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6222).

The justification for the amendments will be improved air quality by the reduction of emissions of hydrocarbons and other pollutants from mobile sources.

The amendments implement the provisions of Executive Order GWB96-1 as authorized by Senate Bill 178, 74th Legislature, 1995, which requires the Texas Department of Public Safety in cooperation with the Texas Natural Resource Conservation Commission to implement a Vehicle Emissions Inspection and Maintenance Program necessary for the state.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to the Health and Safety Code, Chapter 382, §§382.037, 382.038, and 382.0371, and Texas Transportation Code, Chapter 502 and Chapter 548 which provide the Public Safety Commission with the authority to establish a Motor Vehicle Emissions Inspection and Maintenance Program for vehicles in counties that do not meet National Ambient Air Quality Standards.

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 October 23, 1996.

TRD-9615660

Dudley M. Thomas

Director

Texas Department of Public Safety

Effective date: November 18, 1996

Proposal publication date: July 5, 1996

For further information, please call: (512) 424-2890



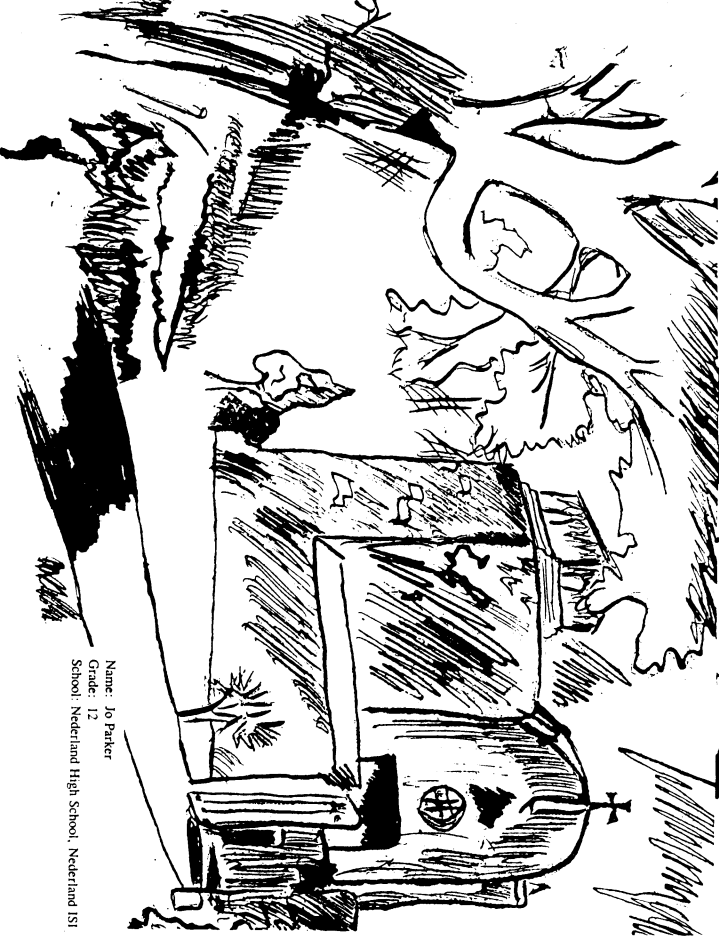
Name: Brianna Eggers
 Grade: 9
 School: Nederland High School, Nederland ISD



Name: Blaine Walby
 Grade: 11
 School: Nederland High School, Nederland ISD



Name: Jeremy Gonzalez
 Grade: 9
 School: Nederland High School, Nederland ISD



Name: Jo Parker
 Grade: 12
 School: Nederland High School, Nederland ISD

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction deadline	Destruction Method (also see footnotes)
1	Feb. 1 - March 31	September 1	shred and plow a,b
2 - Area 1	No dates set	September 10	shred and plow a,b
2 - Area 2	No dates set	September 20	shred and plow a,b
2 - Area 3	No dates set	September 25	shred and plow a,b
2 - Area 4	No dates set	October 1	shred and plow a,b
3 - Area 1	March 5 - May 15	October 22	shred and plow a,b
3 - Area 2	March 5 - May 15	November 15 [October 30]	shred and plow a,b
4	No dates set	October 10	shred and plow a,b
5	No dates set	October 20	shred and/or plow a,c
6 Bastrop, Burnet, Caldwell, Comal, Guadalupe, Hays, and Lee counties	No dates set	October 31	shred and/or plow a,c
6 Travis, Milam, and Williamson counties only	No dates set	November 14 [October 31]	shred and/or plow a,c
7	March 20 - May 31	November 30	shred and/or plow a,c,d
8	March 20 - May 31	November 30	shred and/or plow a,c
9	No dates set	February 1	shred and plow b,e
10	No dates set	February 1	shred and plow b,e

a/ Alternative destruction methods are allowed (see paragraph (b)).

b/ Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

c/ Destruction shall periodically be performed to prevent presence of fruiting structures.

d/ Destruction method in Houston County only will be shred and plow.

e/ Soil shall be tilled to a depth of 2 or more inches in Zone 9,
and to a depth of 6 or more inches in Zone 10.



Name: Ryan Hollub
Grade: 7
School: Friendswood Jr. High School, Friendswood ISD



Camel
Name: John Ly
Grade: 7
School: Friendswood Jr. High School, Friendswood ISD



THE BUSY BEE
Name: Scott Moore
Grade: 7
School: Friendswood Jr. High School, Friendswood 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 the 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 equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Monday, November 18, 1996, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue
Austin

Utility Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in SOAH Docket No. 473-96-0210; PUC Docket No. 15195-Application of TEXAS UTILITIES ELECTRIC COMPANY, INC. To Reconbile its Fuel costs and fuel cost revenues, and for an accounting order under PUC SUBST. R. 23.23(B)(2)(b)(V)

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: October 31, 1996, 4:20 p.m.

TRD-9615857

Monday, January 13, 1997, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue

Austin

Utility Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in SOAH Docket No. 473-96-0115; PUC Docket No. 15042-Application of GTE SOUTHWEST INC. to revise general exchange tariff to incorporate all Centranet and Integrated Services Digital Network (ISDN) Services pursuant to PUC SUBST. R. 23.69.

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: October 31, 1996, 4:20 p.m.

TRD-9615856

Texas Commission for the Blind

Thursday, November 14, 1996, 8:00 a.m.

Four Points Hotel by ITT Sheraton, 505 Avenue Q
Lubbock

Governing Board Legislative Committee

AGENDA:

1. Update on legislative activities.
2. Discussion and action: Possible sponsorship of legislation during the upcoming Legislative session.

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: November 4, 1996, 9:05 a.m.

TRD-9615950

Thursday, November 14, 1996, 10:00 a.m.

Four Points Hotel by ITT Sheraton, 505 Avenue Q
Lubbock

Governing Board Budget Committee

AGENDA:

1. Update on agency budget.

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: November 4, 1996, 9:05 a.m.

TRD-9615951

Thursday, November 14, 1996, 12:00 p.m.

Four Points Hotel by ITT Sheraton, 505 Avenue Q

Lubbock

Governing Board Administration Committee

AGENDA:

1. Discussion and action: Proposed amendments to §172.2 concerning mandated advisory committees and to §172.3 concerning committees and councils established by the Board
2. Discussion and action: Proposed new chapter 164 pertaining to the agency's Independent Living Program
3. Discussion and action: Proposed repeal of §159.12 of Chapter 159 and proposed new §159.12 concerning charges for copies of public information
4. Discussion and action: Personnel evaluation form for Executive Director and Internal Auditor

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: November 4, 1996, 9:06 a.m.

TRD-9615952



Thursday, November 14, 1996, 3:00 p.m.

Four Points Hotel by IIT Sheraton, 505 Avenue Q

Lubbock

Governing Board Audit Committee

AGENDA:

1. Discussion regarding status of FY'97 Audit Plan and action if required.

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: November 4, 1996, 9:06 a.m.

TRD-9615953



Friday, November 15, 1996, 8:30 a.m.

Four Points Hotel by IIT Sheraton, 505 Avenue Q

Lubbock

Governing Board

AGENDA:

1. Introductions/ 2. Public Comments/ 3. Approval: Minutes from Board meeting of August 8, 1996

Old Business: 4. Discussion and action: Board personnel evaluation form for Executive Director and Internal Auditor

New Business: 5. Discussion and action: Executive Director's report on fourth quarter and end-of-year agency activities

6. Approval: Capital outlay

7. Discussion and action: Resolution 96-02 from the American Council of the Blind of Texas

8. Discussion and action: Proposed amendments to §172.2 concerning mandated advisory committees and §172.3 concerning committees and councils established by the Board

9. Discussion and action: Proposed new chapter 164 pertaining to the agency's Independent Living Program

10. Discussion and action: Proposed repeal of §159.12 of Chapter 159 and proposed new §159.12 concerning charges for copies of public information

11. Discussion and action: Board Committee Reports-Special Committee on Grants; Legislative Committee; Budget Committee; Administrative Committee; and Audit Committee

12. Discussion and action: Establishment grant applications

13. Status report on the National Federation of the Blind's Newline service-Impact on employment opportunities for blind and visually impaired Texans

14. Discussion: Abandonment of facilities on the Business Enterprises Program

15. Executive session pursuant to Chapter 551 of the Government Code to discuss: Personnel and pending or contemplated litigation with attorney; Evaluation of Internal Auditor; Evaluation of Executive Director; Annual appointment of Executive Director

16. Action, if required, on matters discussed in executive session.

17. Discussion and action: Date and location of next regular meeting

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: November 4, 1996, 9:07 a.m.

TRD-9615954



Texas Certified Self-Insurer Guaranty Association

Monday, November 11, 1996, 8:00 a.m.

Double Tree Hotel at Post Oak

Houston

Board

AGENDA:

I. Call to Order.

II. Approval of Minutes for the Public Meeting of August 1, 1996

III. Discussion, consideration and possible action on the following initial application: A. Nabisco, Inc.

IV. Discussion, consideration and possible action on the following renewal applications:

A. Archer-Daniels-Midland Company

B. Union Tank Car Company

C. Parker Hannifin Corporation

D. Hyarr Corporation

E. HEALTHSOUTH Corporation

F. W.R. Grace and Company

G. Occidental Chemical Corporation

H. Dean Foods Company

- I. Overnight Transportation Company
- J. Union Pacific Motor Freight Company
- K. Lockheed Martin Corporation
- L. VF Corporation
- M. International Paper company
- N. AAA Cooper Transportation
- O. The Limited, Inc.
- P. Rohm and Haas Company
- V. Other Business
- VI. Discussion of Future Public Meetings
- VII. Adjournment

Contact: Judy Roach, 1600 San Jacinto Center, 98 San Jacinto Boulevard, Austin, Texas 78701, (512) 322-2514.

Filed: November 1, 1996, 2:50 p.m.

TRD-9615908

Texas Board of Chiropractic Examiners

Friday, November 8, 1996, 9:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Licensure and Educational Standards Committee

REVISED AGENDA:

Consideration, discussion, any appropriate action, and/or approval of:
 A) Request for extension of Inactive status due to illness: Thomas M. Johnson, D.C., B) Request for reinstatement of license: Kimberly Kales, D.C., Amy Kitching, D.C., Edward T. Nurse, D.C., C) Request for waiver of educational requirements: Jeffrey W. Collins, D.C., Randy B. Howe, D.C., Franklin Watkins, Jr., D.C., D) Request for waiver of Continuing Education requirement (all or part) due to illness: Marie Isenberg, D.C., Robert J. Nance, D.C., Patricia Miller, D.C., Emma Chitwood, D.C., E) Ratification of examinees who passed jurisprudence examination, F) Acceptance of Provisional Licensure application in which license was probated by another state, G) Radiologic Technologist continuing education course instructor/sponsor criteria, H) SPEC exam for individuals licensed before 1985.

Contact: Patte B. Kent, Executive Director, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: October 30, 1996, 3:15 p.m.

TRD-9615807

Friday, November 8, 1996, 1:30 p.m.

333 Guadalupe, Tower I, Room 102

Austin

REVISED AGENDA:

The Texas Board of Chiropractic Examiners will meet on Friday, November 8, 1996 at 1:30 p.m. to consider, discuss, take any

appropriate action, and/or approve; I. Minutes of the September 12, 1996 Board meeting.

II. Report of the President on Board activities and the Chiropractic profession;

III. Report of the Executive Director on administration, budget, internal policy and procedure, personnel, and general information on licensees;

IV. Committee Reports: A) Enforcement Committee — 1. Enforcement actions-Fiscal Year 1996, 2. Enforcement actions-September 1, 1996 through October 25, 1996, 3. Compliance verification visits; B) Licensure and Educational Standards Committee- 1. Request for extension of Inactive status due to illness: Thomas M. Johnson, D.C., 2. Request for reinstatement of license; Kimberly Kales, D.C., Amy Kitching, D.C., Edward T. Nurse, D.C., 3. Request for waiver of educational requirements: Jeffrey W. Collins, D.C., Randy B. Howe, D.C., Franklin Watkins, Jr., D.C., Jay E. Young, D.C., Richard L. Williams, D.C., Gregg Risner, D.C., 4. Request for waiver of Continuing Education requirement (all or part) due to illness: Marie Isenberg, D.C., Robert J. Nance, D.C., Patricia Miller, D.C., Emma Chitwood, D.C., 5. Ratification of examinees who passed jurisprudence examination, 6. Acceptance of Provisional Licensure application in which license was probated by another state, 7. Radiologic Technologist continuing education course instructor/sponsor criteria, 8. SPEC exam for individuals licensed before 1985; C) Technical Standards Committee — 1. Needle EMG, 2. Chiropractic Physician, 3. Attorney General Opinion on Acupuncture, 4. JMPT Scope of Practice, 5. Chiropractic assistants performing bloodwork, 6. Cash or family discounts, prepayment plans, wellness plans, 7. Hospital referrals, 8. Cooperative advertising, 9. Delegation to assistants, 10. CPT codes, 11. Videofluoroscopic studies, 12. Request for Attorney General Opinion on Injectables (update only), 13. Third party billing and confidentiality; D) Executive Committee- 1. Audit Report, 2. Worker's Compensation Commission response to Joint Hearing testimony documentation; E.) Rules Committee — 1. Section 74.1; Chiropractic Facilities, 2. Section 73.3; Refresher Courses;

V. Items to be considered for future agenda.

Contact: Patte B. Kent, Executive Director, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: October 30, 1996, 3:15 p.m.

TRD-9615806

Comptroller of Public Accounts

Thursday, November 14, 1996, 2:00 p.m.

William B. Travis Building, Room 1-100, 1701 North Congress

Austin

Interagency Task Force on EBT

AGENDA:

This notice announces the fifth meeting of the Interagency Task force on Electronic Benefits Transfer, created pursuant to H.B. 1863 (referred to as the Welfare Reform Bill). The Interagency Task Force on Electronic Benefits Transfer was created to advise and assist in adding new benefit programs to the statewide electronic benefits transfer (EBT) system.

I. Review of new agency applications: Texas Department of Human Services, (TDHS) fingerprint imaging project; Farmers Market Pilot at TDHS; University of Texas student ID hybrid card; General Services Commission purchase card; Survey of other state agencies; Department of Public Safety digitized drivers license and ID card update; Texas Department of Health Supplemental Feeding Program for Women, Infants, Children and Medicaid; Office of the Attorney General child support enforcement; Texas Workforce Commission unemployment compensation.

II. Development of strategic guidelines for EBT use by state agencies

III. Status of ATM access and related financial information

IV. Update on federal issues

V. Report from Public Assistance Fraud Oversight Task Force

VI. Summary of progress to date and approval of minutes

VII. Comments from the audience

Contact: Annette Lo Voi, EBT Liaison, Comptroller of Public Accounts, 111 East 17th Street, Room G29, Austin, Texas 78774, (512) 305-8610.

Filed: November 1, 1996, 2:24 p.m.

TRD-9615903

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Thursday, November 21, 1996, 10:00 a.m.

LBJ Building, Room 114, 111 East 17th Street

Austin

Public Assistance Fraud Oversight Task Force

AGENDA:

This notice announces the fifth meeting of the Public Assistance Fraud Oversight Task Force, created pursuant to H.B. 1863 (referred to as the Welfare Reform Bill). The Public Assistance Fraud Oversight Task Force was created to advise and assist the Department of Human Services and its Inspector General in improving the efficiency of fraud investigations and collections.

I. Report on (TDHS) fingerprint imaging

II. Farmers Market Pilot at TDHS

III. Prosecution overview

IV. Discussion of data analysis efforts underway

V. Status of data exchange and data matching efforts and other cooperative efforts among agencies

VI. Review of fraud data submitted to task force

VII. Summary of progress to date and approval of minutes

VIII. Comments from the audience

Contact: Annette Lo Voi, EBT Liaison, Comptroller of Public Accounts, 111 East 17th Street, Room G29, Austin, Texas 78774, (512) 305-8610.

Filed: November 1, 1996, 2:24 p.m.

TRD-9615904

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Texas Planning Council for Developmental Disabilities

Thursday, November 7, 1996, 9:00 a.m.

Sheraton Hotel, 500 North IH35

Austin

Executive Committee

AGENDA:

9:00 a.m. Call to Order

I. Introductions

II. Public Comments

III. Approval of Minutes of September 12, 1996

IV. Consideration of Stipends Application

V. Chair's Report- A) TPCDD Priorities Survey Results, B) New Member Mentor Program, C) Other Report Items

VI. Executive Director's Report-A) Information and Update Items

VII. TPCDD Budget Status Report

VIII. Consideration of TPCDD Policies

IX. TPCDD Planning Process

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 Rosalinda Lopez at (512) 424-4094.

Contact: Roger Webb, Executive Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4080.

Filed: October 30, 1996, 11:28 a.m.

TRD-9615793

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Texas Education Agency (TEA)

Monday, November 25, 1996, 9:00 a.m.

1701 North Congress Avenue, William B. Travis Building, Room 1-100

Austin

AGENDA:

The Texas Education Agency will conduct a public hearing regarding the proposed amendment to 19 Texas Administrative Code Chapter 75, Subchapter AA, §75.1010, Procedures for Student Certification. Dr. Jay Cummings, associate commissioner, Office of Special Populations and Adults, will receive testimony at the hearing. The hearing will conclude at 5:00 p.m. or upon completion of testimony, whichever occurs first. The purpose of the hearing is in response to a request for a public hearing from the Driving School Association of Texas. Registration will be taken in advance on a first-come, first-served basis by calling the Division of Continuing Education, (512) 463-9322, Monday through Friday, 8:00 a.m. to 5:00 p.m. Registration will also be taken on site the day of the hearing if time

slots are still available. Testifiers will present in the order they were registered. Written testimony may be submitted in lieu of verbal testimony.

Contact: Lauralea Bauer, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9233.

Filed: November 4, 1996, 9:55 a.m.

TRD-9615970

◆ ◆ ◆
Texas Department of Health

Friday, November 8, 1996, 9:30 a.m.

Exchange Building, Room N218, Texas Department of Health Annex, 8407 Wall Street

Austin

Informal Home and Community Support Services Agency Task Force

AGENDA:

The task force will introduce members, guests, and staff, and discuss and possibly act on: review of draft revisions to 25 TAC Chapter 115 (Home and Community Support Services Agencies rules); and public comments.

To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD(512) 458-7708 at least two days prior to the meeting.

Contact: Julia Maldonado, 1100 West 49th Street, Austin, Texas 78756, (512) 834-76647.

Filed: October 31, 1996, 4:21 p.m.

TRD-9615858

◆ ◆ ◆
Friday and Saturday, November 8 and 9, 1996, 1:00, and 8:00 respectively.

Exchange Building, Room S402, Texas Department of Health Annex, 8407 Wall Street ** Saturday meeting Health Professions Council, Tower 2, Room 225, 333 Guadalupe, Austin, Texas 78701, only if necessary

Austin

Medical Radiologic Technologist Advisory Committee, Rules Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on: introduction of members, guests and staff; approval of minutes from the June 21, 1996, meeting; program administrator's report; Attorney General Letter Opinions (#96-077 and #96-101); Texas Radiation Advisory Board (TRAB) recommendations concerning nuclear medicine studies; list of dangerous or hazardous procedures and Bone Densitometry and Grenz rays; appropriate training requirements for persons performing Bone Densitometry; review comments received concerning proposed new sections (25 TAC, §143.16, Dangerous or Hazardous Procedures; §143.19, Hardship Exemptions; and §143.20, Alternate Training Requirements) published in the October 1, 1996 issue, 21 TexReg 9404; adoption of final rules (§§143.2, 143.4-143-0, 143.16, 143.19 and 143.20); draft of proposed amendments to (25 TAC §§143.1-143.20); and public comments.

Contact: Donna S. Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD 458-7708 at least two days prior to the meeting.

Filed: October 31, 1996, 4:21 p.m.

TRD-9615859

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Saturday, November 9, 1996, 10:00 a.m.

Health Professions Council, Tower 2, Room 225, 333 Guadalupe Austin

Medical Radiologic Technologist Advisory Committee

AGENDA:

The advisory committee will discuss and possibly act on: introduction of members, guests and staff; approval of minutes from the June 22, 1996, meeting; program administrator's report; timetables for publication and adoption of amendments and new sections; Attorney General Letter Opinions (#96-077 and #96-101); Texas Radiation Advisory Board (TRAB) recommendations concerning nuclear medicine studies; list of dangerous or hazardous procedures and Bone Densitometry and Grenz rays; appropriate training requirements for persons performing Bone Densitometry; report from Rules Subcommittee; final adoption of amendments to rules (25 TAC §§143.2, 143.4-143-9) published in the October 1, 1996, issue, 21 TexReg 9399; final adoption of new rules (25 TAC, §143.16, Dangerous or Hazardous Procedures §143.19, Hardship Exemptions; and §143.20, Alternate Training Requirements) published in the October 1, 1996 issue, 21 TexReg 9404; draft of proposed amendments to rules (25 TAC §§143.1-143.20); public comments; and announcements of next meeting date.

Contact: Donna S. Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. To request accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD 458-7708 at least two days prior to the meeting.

Filed: October 31, 1996, 4:21 p.m.

TRD-9615860

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Texas Historical Commission

Friday, November 8, 1996, 10:00 a.m.

William.P. Clements Building, 300 W. 15th Street, Committee Room 5

Austin

State Board of Review Workshop

AGENDA:

- I. Call to Order
- II. National Register Workshop
- III. Adjournment

Contact: Dwayne Jones, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-5997.

Filed: October 30, 1996, 3:48 p.m.

TRD-9615808

◆ ◆ ◆
Saturday, November 9, 1996, 9:00 a.m.

William.P. Clements Building, 300 West 15th Street, Committee Room 5

Austin

State Board of Review Meeting

AGENDA:

I. Call to Order

II. Minutes of June 7th, June 8th, and September 28th, 1996

III. Announcements

IV. Review of Nominations for the National Register of Historic Places

V. New Business

VI. Adjournment

Contact: Dwayne Jones, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-5997.

Filed: October 30, 1996, 3:49 p.m.

TRD-9615811

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Texas Department of Insurance

Monday, November 25, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

Prehearing Conference in the Matter of the Request for an Appeal Hearing by Children's Medical Center of Dallas.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 4, 1996, 9:40 a.m.

TRD-9615968

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Tuesday, November 26, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

In the Matter of Thomas K. Lawless d/b/a National Processing Center (continued from 6/28/96).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 4, 1996, 9:40 a.m.

TRD-9615969

Tuesday, November 26, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

In the Matter of Guardian Security Life Insurance Company

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 4, 1996, 9:34 a.m.

TRD-9615960

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Boards for Lease of State-owned Lands

Thursday, November 7, 1996, 3:30 p.m.

1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Parks and Wildlife Department

AGENDA:

Approval of previous board meeting minutes; pipeline easement application, Alazan Bayou Wildlife Management Area, Nacogdoches County.

Contact: Linda K. Fisher, Secretary, Boards for Lease, Stephen F. Austin Building, 1700 North Congress, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 30, 1996, 2:48 p.m.

TRD-9615801

◆ ◆ ◆
Texas State Library and Archives Commission

Friday, November 15, 1996, 1:00 p.m.

Room 314, Lorenzo de Zavala State Archives and Library Building

Austin

AGENDA:

1. Approve Minutes of the August 28, 1996 Commission meeting
2. Director's Report
3. Approve FY97 Internal Audit Plan
4. Accept Internal Auditor's Report on Technical Services Division
5. Discussion of draft proposed rules concerning Commission responsibilities and procedures
6. Public comment

Contact: Nancy Webb, Executive Assistant, Texas State Library, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460.

Filed: October 31, 1996, 4:22 p.m.

TRD-9615861

◆ ◆ ◆
Midwestern State University

Friday, November 8, 1996, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The Board of Regents will consider the minutes of the August 2, September 11, and October 9, 1996 Board of Regents meetings and will review financial reports for the months ending July, August and September 1996. A Nominating committee will be appointed to make a recommendation at the February 1997 Board meeting concerning the university president's contract for 1997-98. A report will be made and the Board will discuss MSU Admissions Policies. The Board will consider recommendations and receive information from the Executive, Finance and Audit, Personnel and Curriculum, Student Services, University Development and Athletics Committees of the Board. A report will be presented by the President of the University concerning developments at MSU. The Board of Regents of Midwestern State University reserves the right to discuss any items in Executive Session whenever legally justified and properly posted in accordance with the Texas Government Code, Chapter 551.

Contact: Deborah L. Barrow, Midwestern State University, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: November 4, 1996, 9:25 a.m.

TRD-9615956

TRD-9615815

Thursday, November 14, 1996, 9:30 a.m.

Natural Resources Center, Room 1003, Texas A&M University, 6300 Ocean Drive

Corpus Christi

Management Committee of the Corpus Christi National Estuary Program

AGENDA:

- I. Call to order/Introductions/Approval of Minutes
- II. Discussion/Approval of "Public Health" Final Report
- III. Discussion of STAC Role
- IV. Presentation: The State Wetlands Conservation Plan for Texas
- V. Action Planning Task Force Briefings: Dredging, Freshwater Resources, Point Resources
- VI. Additional Items/Adjourn

Contact: Richard Volk, Program Director, TAMU-CC, Natural Resources Center, Suite 3300, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 980-3420.

Filed: November 1, 1996, 12:07 p.m.

TRD-9615892

Texas Natural Resource Conservation Commission

Thursday, November 7, 1996, 1:30 p.m.

Room 201S, Building E, 12118 North Interstate 35

Austin

AGENDA:

This meeting is a work session for discussion between Commissioners and Staff. No Public testimony or comment will be accepted except by invitation of the Commissioners.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: October 30, 1996, 1:01 p.m.

TRD-9615796

Thursday, November 7, 1996, 1:30 p.m.

Room 201S, Building E, 12118 North Interstate 35

Austin

REVISED AGENDA:

This meeting is a work session for discussion between Commissioners and Staff. Commission will consider an addendum to Work Session regarding closed session.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: October 30, 1996, 4:39 p.m.

Monday, November 18, 1996, 9:00 a.m.

Room 310A, Building A, 12124 Park 35 Circle

Austin

AGENDA:

SOAH Docket No. 582-96-1891. A hearing before an Administrative Law Judge of the State Office of Administrative Hearings (SOAH) will be held on an application for authority to adopt and impose a non-uniform debt service standby fee on undeveloped property in Montgomery County Municipal Utility District Number 43 (the "District"). The application was filed and the hearing will be held under the authority of Chapters 49 and 50 of the Texas Water Code, 30 Texas Administrative Code Section 293, and under the procedural rules of the Texas Natural Resource Conservation Commission, and under the procedural rules of SOAH. The hearing will be a legal proceeding similar to civil trials in state district court.

Contact: TNRCC Office of Public Assistance, MC-108, P.O. Box 13087, Austin, Texas 78711-3087, 1-800-687-4040.

Filed: October 31, 1996, 2:56 p.m.

TRD-9615849

Wednesday, December 4, 1996, 9:30 a.m.

Room 201S, Building E, 12118 North Interstate 35

Austin

AGENDA:

The purpose of the hearing will be to determine whether a temporary order (TNRCC Docket No. 96-1531-IWD) should be issued to St. Martin's Seafood, Partnership. The Temporary Order, if issued, would allow St. Martin's Seafood's request to discharge mariculture wastewater at a volume not to exceed an average of 5,000,000 gallons per day. The Executive Director has submitted a separate order that, if issued, would deny St. Martin Seafood's request for a temporary order. The facility is located on the west side of Farm-to-Market Road 3280, 2.5 miles south of the intersection of Farm-to-Market Road 3280 and Highway 35, 9 miles west of the City of Palacios, Calhoun County, Texas.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: November 1, 1996, 11:54 a.m.

TRD-9615891

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Texas State Board of Plumbing Examiners

Tuesday, November 12, 1996, 9:30 a.m.

502 Link Road

Houston

Board

AGENDA:

1. Roll call- 9:30 a.m.;
2. Recognize staff and visitors;
3. Public comment;
4. Consider approval of the minutes of the 9/9/96 Board Meeting;
5. Hear Committee reports: a. Continuing Education; b. Rules Review; c. Code; d. Enforcement; e. Examination; f. Legislative; g. Medical Gas; h. Personnel; i. Water Supply Protection Specialist;
6. Field Department;
7. Examination Department;
8. Hardship cases;
9. Request for review of the International Plumbing Code;
10. Fiscal Department;
11. Administrative Department;
12. Discussion of frequency, date, and location of Board Meetings;
13. Adjournment.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas, 78751 (512) 458-2145, extension 222.

Filed: November 1, 1996, 12:41 p.m.

TRD-9615893

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Public Utility Commission of Texas

Thursday, November 7, 1996, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on: Secretary's report, Docket Numbers 16189, Petition of MFS Communication Company, Inc., for Arbitration of Pricing of Unbundled Loops; 16196, Petition of Teleport Communications Group, Inc., for Arbitration to Establish an Interconnection Agreement; 16226, Petition of AT&T Communications of the Southwest, Inc., for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company; 16285, Petition of MCI Telecommunications Corporation and

Its Affiliate MCIMetro Access Transmission Services, Inc., for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996; and 16290, Petition of American Communications Services, Inc., and Its Local Exchange Operating Subsidiaries for Arbitration with Southwestern Bell Telephone Company Pursuant to the Telecommunications Act of 1996; Project Nos. 15345 and 15452, Area Code Relief in 817 and 210 NPAs, Implementation Oversight; Docket Nos. 14452 and 15810; Project No. 16091; Docket No. 15630 (SOAH Docket No. 473-96-0705) Complaint of Gas Services, Inc., Against Southwestern Bell Telephone Company, Inc.; Docket No. 15367; Project No. 14033; Discussion of GTE's quality of service, consumer complaints, upgrade of services and status of pending sale of exchanges and implementation plans to meet PURA95 section 3.358 infrastructure commitment; Docket Nos. 15372, 16295, 15905, 15906, 15907, 15908, 15909, 15927, 16146, 16151, 16154, 16167, 16168, 16392, 16400, 16391, 16421, 16452; Project No. 14360; Discussion of the Federal Telecommunications Act of 1996, including actions taken by the FCC; Discussion of funding intrastate portion of Relay Texas; Docket No. 15296 (SOAH Docket No. 473-96-1519) Inquiry of the Public Utility Commission of Texas Under §2.056 of PURA Relating to Transmission Service Provided by the Texas Municipal Power Agency and the City of Bryan to the City of College Station; Docket No. 15840, Regional Transmission Proceeding to Establish Postage Stamp Rate Statewide Load Flow Pursuant to P.U.C. SUBST.R. §23.67; Docket Nos. 16439, 16085, 16243, Project No. 16410; Project Nos. 15000, 15001 and 15002; Project No. 16422, Amendment to SUBST. 4. §§23.43, 23.45 and 23.46; Project assignments, correspondence, staff reports, agency administrative procedures, budget, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7145.

Filed: October 30, 1996, 2:46 p.m.

TRD-9615799

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Thursday, November 14, 1996, 9:00 a.m.

1701 North Congress Avenue

Austin

Synchronous Interconnection Committee

AGENDA:

Project No. 14894: A workshop and meeting of the Synchronous Interconnection Committee will be held to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of the electric utilities within the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of the electric utilities within the southwest Power Pool reliability area, including the cost and benefit to effect the interconnection, an estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be located, pursuant to Texas Civil Statutes, Article 1446c-0, Section 2.056(b).

The workshop will address issues relating to interconnection including, but not limited to, questions issued by the Committee. Copies of the questions are available on the PUC Homepage at

http://www.puc.state.tx.us or from Jim Neeley at the address as follows. All interested parties are invited to attend and to provide comments orally or in writing. Parties should submit seven copies of written comments to Jim Neeley at the address below and should specify: Project No. 14894, November 14, 1996 Workshop.

Contact: Jim Neeley, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7342. Hearing and speech impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136. Filed: October 30, 1996, 3:48 p.m.

TRD-9615809

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Friday, November 22, 1996, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket No. 16585- Application of Hattie Watkins for a Service Provider Certificate of Operating Authority. Applicant will be a reseller only for home phone service. The geographic areas for which the Applicant is requesting service is Dallas County, Lubbock County, and Amarillo, Potter, County. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by November 15, 1996.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7145.

Filed: October 31, 1996, 8:17 a.m.

TRD-9615816

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Texas Racing Commission

Friday, November 1, 1996, 10:00 a.m.

John H. Reagan Building, Room 101

Austin

EMERGENCY REVISED AGENDA:

Consideration of and action on request by Sam Houston Race Park for additional live race dates.

REASON FOR EMERGENCY: Due to the unforeseen cancellation of live race dates at other racetracks, certain live race dates became available to be granted to another racetrack. If those race dates go unawarded to another track and are not run as live race dates, the State of Texas and the industries that profit from live racing will lose the revenue that would be generated by live racing on those dates.

Contact: Paula Cochran Carter, General Counsel, P.O. Box 12080, Austin, Texas 78701, (512) 833-6699.

Filed: October 31, 1996, 3:25 p.m.

TRD-9615852

◆ ◆ ◆
Railroad Commission of Texas

Tuesday, November 12, 1996, 9:30 a.m.

1701 North Congress Avenue, 1st Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, The Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr., Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7033.

Filed: November 1, 1996, 12:49 p.m.

TRD-9615895

◆ ◆ ◆
Friday, November 15, 1996, 9:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

The Commission will hold an oral argument on Oil and Gas Docket Number 09-0210937; Commission called hearing to determine whether sanctions should be imposed against S.M. Ferguson, Jr. in regard to its application filed in Rule 37 Case Number 0203291, Boyles "C" Lease, Well Number 4, Hardeman County, Texas

Contact: Larry Borella, Assistant Director Oil and Gas, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6924.

Filed: November 1, 1996, 12:49 p.m.

TRD-9615894

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Texas Residential Property Insurance Market Assistance Program

Wednesday, November 13, 1996, 9:30 a.m..

333 Guadalupe, Tower 1, Room 1264

Austin

Executive Committee

AGENDA:

Antitrust statement; Opportunity for public input; Discussion of Removal of Executive Committee members for cause (§5.10010(a)(7) of the Plan of Operation); Staff update on status of implementation of MAP operations, MAP activity, and Voluntary Inspection Program; Educational initiatives, including public relations and promotional activities: industry, agent, consumers; Discussion of whether to recommend legislative changes to Commissioner, and if so, what changes; Other H.B. 1367 provisions that relate to MAP; General administrative matters

Contact: Lyndon Anderson, 333 Guadalupe Street, Texas Department of Insurance, Austin, Texas (512) 322-2235.
Filed: November 1, 1996, 10:29 a.m.

TRD-9615880

◆ ◆ ◆
Center for Rural Health Initiatives

Friday, November 15, 1996, 10:00 a.m.

Center for Rural Health Initiatives, Southwest Tower Building, 211 East 7th Street, 7th Floor Conference

Austin

Executive Committee

AGENDA:

Center for Rural Health Initiatives Executive Committee will meet to discuss and possibly act on: Welcome and Introductions; Minutes from October 24, 1996, meeting; Executive Director's Report; Review and action on draft of legislative report; Advisory Committee Reports; and adjourn.

Contact: Laura Jordan, P.O. Drawer 1708, Austin, Texas 78767, (512) 479-8801

Filed: October 30, 1996, 2:49 p.m.

TRD-9615805

◆ ◆ ◆
Texas Savings and Loan Department

Wednesday, November 20, 1996, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, 3rd Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Horizon Bank & Trust, SSB, Austin, Texas to operate a branch office at 2401 South Congress, Austin, Travis County, Texas, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, Supervisory Analyst, 2601 North Lamar, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: October 31, 1996, 10:08 a.m.

TRD-9615821

◆ ◆ ◆
Friday, November 22, 1996, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, 3rd Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Mark Lovvorn, Richard Giesecke, Jack Brady, Walter Durham, and Mark Goode, as incorporators, for Dallas Bancshares Corporation, proposed holding company, to operate a de novo state savings bank, BankDallas, SSB at 3802 Oak Lawn Avenue, Dallas, Dallas County, Texas from which

record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, Supervisory Analyst, 2601 North Lamar, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: October 31, 1996, 9:29 a.m.

TRD-9615817

◆ ◆ ◆
Texas Skill Standards Board

Tuesday and Wednesday, November 12 and 13, 1996, 10:00 a.m. and 9:00 respectively

Spring Woods High School, 2045 Gessner Road and Houston Works, 600 Jefferson Street, Suite 1300

Houston

Full Board

AGENDA:

Tuesday, November 12, 1996, 10:00 a.m. — Tour of Toshiba International Plant; Convene at Spring Woods High School; Meet with Spring Woods High School students, faculty and administrators of Spring Branch ISD, parents, and industry mentors working with students, and with personnel from Houston Community College and University of Houston; Roundtable Discussion with National Science foundation Advisory Board members regarding skill standards implementation and partnership issues.

Wednesday, November 13, 1996, 9:00 a.m.- Call to Order, Announcements, Public Comment, approval of Minutes; Opening Remarks — Guest Speaker: Ted Melina-Raab, Executive Director, Legislative Oversight Committee; Action Item: Board by-Laws; Briefing: Snapshot of Existing Skill Standards/Certification in Texas and Update on National Skill Standards Board; Briefing: Update on National Skill Standards Board; Working Lunch- Guest Speaker: Ray Lawrence, Houston Export Council (Invited); Briefing: Existing Industry Initiatives and Discussion of Potential Relationship; Discussion: Strategic Planning Workshop; Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 912-7158 (or Relay Texas 800-735-2988) at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, TCWEC, P.O. Box 2241, Austin, Texas 78768, (512) 912-7158.

Filed: November 1, 1996, 2:17 p.m.

TRD-9615902

◆ ◆ ◆
Sunset Advisory Commission

Wednesday, November 13, 1996, 9:00 a.m.

1400 North Congress, Room E1.030, Capitol Extension

Austin

AGENDA:

1. Call to order
2. Approval of minutes

3. Staff presentations and public testimony on:
Texas Commission on Alcohol and Drug Abuse
Criminal Justice Policy Council

Texas Juvenile Probation Commission

Texas Youth Commission

4. Other Business

5. Selection of next meeting date- Proposed dates December 17th & 18th

6. Adjourn.

Contact: Susan Kinney, 1400 North Congress, Room E2.002, Austin, Texas 78701, (512) 463-1300

Filed: October 30, 1996, 1:00 p.m.

TRD-9615794

Teacher Retirement System of Texas

Monday, November 11, 1996, 8:30 a.m.

Bank One Building, 7th Floor, 1717 Main Street

Dallas

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of Minutes of September 27, 1996 and October 25, 1996 Meetings

2. Consider Responses to Request for Offers from Strategic Consultants; (a) Interview finalists, (b) Select Consultant

For ADA assistance, contact Mary Godzik or TDD (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: November 1, 1996, 3:11 p.m.

TRD-9615916

Texas Women's University Board of Regents

Monday, November 4, 1996, 1:45 p.m.

Fairmont Hotel, Patio Room, 3rd Floor, 1717 North Akard

Dallas

Finance and Audit Committee

AGENDA:

I. Meeting called to order

II. Executive Session: Personnel and litigation matters, under V.T.C.A. Government Code Sections 551.074, and 551.071, respectively.

III. Annual financial report

IV. Update on Movement Sciences Complex

V. Meeting Adjourned

Contact: Carol D. Surlis, President, Texas Women's University, P.O. Box 425587, Denton, Texas 76204, (817) 8989-3201.

Filed: October 31, 1996, 2:50 p.m.

TRD-9615843

University Interscholastic League

Monday, November 4, 1996, 8:00 a.m.

Thompson Conference Center, 26th Street and Red River

Austin

Waiver Review Board

AGENDA:

AA. Request for waiver of the Parent Residence Rule by Brent Goodman, Lake Travis High School in Austin, Texas.

BB. Request for waiver of Parent Residence Rule by Angela Howe, MacArthur High School, San Antonio, Texas.

CC. Request for waiver of Parent Residence Rule by Thaddeus Horn, Devine High School, Devine, Texas.

DD. Request for waiver of the Four Year Rule by Ruben Gonzales, Auswell-Tivoli High School, Tivoli, Texas.

EE. Request for waiver of the Four Year Rule by Eustorgio Gama, Andress High School in El Paso, Texas.

FF. Request for waiver of the Four Year Rule by Shawn Phillips, Fox Tech High School, San Antonio, Texas.

GG. Request for waiver of the Parent-Residence Rule by Teri Evelyn Tuxson, The Colony High School, the Colony, Texas.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: October 30, 1996, 2:48 p.m.

TRD-9613802

The University of Texas at Austin

Wednesday, November 6, 1996, 1:00 p.m. (Executive Session)

21st and San Jacinto, Schmidt Building (Ex-Student's Association Building)

Austin

Intercollegiate Athletics for Men

AGENDA:

Convene into open session, Recess into Executive Session, Reconvene into Open Session, Approve Minutes of September 11, 1996; Items from Executive Session, Longhorn Foundation, Major Gifts and Planned Giving, Academics, Schedules/Schedule Changes, Budget/Budget Items, Tickets/Ticket Policy, Construction, New Business, Old Business, and Adjourn.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713, (512) 471-5757.

Filed: October 31, 1996, 3:29 p.m.

TRD-9615853

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Texas Workers' Compensation Insurance Facility

Wednesday, November 13, 1996, 10:00 a.m.

Renaissance Austin Hotel, 9721 Arboretum Boulevard

Austin

Governing Committee

AGENDA:

Executive Session(s) regarding personnel matters and pending legal matters. Following the closed Executive Session(s), the Governing Committee will reconvene in Open and Public Session and take any action as may be desirable or necessary as a result of the closed deliberations. Approval of minutes from the October 23, 1996 Governing Committee meeting. Discussion and possible action on the Requests for Proposals for privatizing Facility operations. Discussion of the 1995 Annual Financial Audit: Management Letter. Appeal to Highlands Insurance Company regarding the Small Premium Policy Plan. Consideration and possible action on servicing company requests for reimbursement of legal fees and expenses. Executive Director's Report.

Contact: Peter E. Potemkin, Executive Director, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: November 1, 1996, 2:49 p.m.

TRD-9615907

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Texas Workforce Commission

Friday, November 8, 1996, 10:00 a.m.

Texas Workforce Commission Building, Room 644, 101 East 15th Street

Austin

AGENDA:

Executive session pursuant to Texas Government Code §551.074 to discuss duties and responsibilities of the Executive Director; Actions, if any resulting from executive session.

Contact: Esther Hajdar, Director of Legal Services, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: October 31, 1996, 3:18 p.m.

TRD-9615850

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Regional Meetings

Meetings filed October 29, 1996:

Gonzales County Appraisal District, Agricultural Advisory Board met at 928 St. Paul, Gonzales, on November 7, 1996, at 6:00 p.m. Information may be obtained from Connie Barfield, Recorder, or Glenda Strackbein, Chief Appraiser, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879. TRD-9615812.

Meetings filed on October 30, 1996

Angelina & Neches River Authority, ANRA Board of Directors, met at Angelina & Neches River Board Meeting Room, 210 Lufkin Avenue, Lufkin, November 5, 1996 at 9:00 a.m. Information may be obtained from Gary L. Neighbors, General Manager, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795. TRD-9615792.

Austin Transportation Study, US 290/Loop 1 Task Force, met at Municipal Annex Building, 301 West 2nd Street, Austin, November 4, 1996 at 12:30 p.m. Information may be obtained from Michael R. Aulick, 301 West 2nd Street, Austin, Texas 78701, (512) 499-2275. TRD-9615790.

Coastal Bend Council of Governments, Executive Board, will meet at 2910 Leopard Street, Corpus Christi, November 8, 1996 at 12:00 noon. Information may be obtained from John P. Buckner, Executive Director, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9615803.

Coastal Bend Council of Governments, Membership/Board, will meet at 2910 Leopard Street, Corpus Christi, November 8, 1996 at 2:00 p.m. Information may be obtained from John P. Buckner, Executive Director, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9615804.

Gregg Appraisal District, Board of Directors, met at 2010 Gilmer Road, Longview, November 4, 1996 at 12:15 p.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604. TRD-9615810.

High Plains Underground Water Conservation District Number 1, Board, met at 2930 Avenue Q, Board Room, Lubbock, November 5, 1996 at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, Manager, High Plains Underground Water Conservation District Number 1, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9615795.

Stephens County Rural Water Supply Corporation, Board, met at 301 West Elm Street, Breckenridge, November 4, 1996 at 6:00 p.m. Information may be obtained from Mary Barton, Office Manager, Stephens County Rural Water Supply Corporation, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9615791.

Tyler County Appraisal District, Board of Directors, will meet at 806 West Bluff, Woodville, November 12, 1996 at 10:00 a.m. Information may be obtained from Tyler Cad, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9615787.

Meetings filed October 31, 1996

Austin Transportation Study, US 290/Loop 1 Task Force, met at the Municipal Annex Building, 301 West 2nd Street, First Floor Large Conference Room, Austin, November 4, 1996 at 12:30 p.m. Information may be obtained from Michael R. Aulick, 301 West 2nd Street, Austin, Texas 78701, (512) 499-2275. TRD-9615835.

Austin-Travis County MHMR Center, Executive Committee, met at 1430 Collier Street, Austin, October 31, 1996 at 4:30 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9615841.

Brazos Valley Development Council, Regional Advisory Committee on Aging, met at 1706 East 29th Street, Bryan, November 5, 1996 at 2:30 p.m. Information may be obtained from Roberta Lindquist, Manager Area Agency on Aging, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9615851.

Community Action Committee of Victoria, Texas, Board of Directors, Executive Committee, met at 1501 North DeLeon, Suite A, Victoria, November 4, 1996 at 12:00 noon. Information may be obtained from Vicki Smith, 1501 North DeLeon, Suite A, Victoria, Texas 77902-2142, (512) 578-2989. TRD-9615836.

Dallas Area Rapid Transit, President's Luncheon, met at DART Conference Room C, 1st Floor, 1401 Pacific Avenue, Dallas, November 5, 1995 at 12:00 noon. Information may be obtained from Paula Bailey, Dallas Area Rapid Transit, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9615844.

Dallas Area Rapid Transit, Area Chairs, met at DART Conference Room B, 1st Floor, 1401 Pacific Avenue, Dallas, November 6, 1996, at 11:00 a.m. Information may be obtained from Paula Bailey, Dallas Area Rapid Transit, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9615847.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, Texas, November 6, 1996 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9615834.

Texas Municipal Power Agency ("TMPA") Personnel Committee, met at Gibbons Creek Steam Electric Station Administration Building, 2.5 miles North of Carlos Texas on FM-244, Carols, November 7, 1996 at 8:00 a.m. Information may be obtained from Carl Shahady, Agency Attorney, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9615845.

Texas Municipal Power Agency ("TMPA") Audit & Budget Committee, met at Gibbons Creek Steam Electric Station Administration Building, 2.5 miles North of Carlos Texas on FM-244, Carols, November 7, 1996 at 8:00 a.m. Information may be obtained from Carl Shahady, Agency Attorney, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9615846.

Texas Municipal Power Agency ("TMPA") Board of Directors, met at Gibbons Creek Steam Electric Station Administration Building, 2.5 miles North of Carlos Texas on FM-244, Carols, November 7, 1996 at 10:00 a.m. Information may be obtained from Carl Shahady, Agency Attorney, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9615855.

Meetings filed November 1, 1996

Aqua Water Supply Corporation, Board of Directors, met at 305 Eskew, Bastrop, November 4, 1996 at 7:30 p.m. Information may be obtained from Adlinie Rathman, Office Manager, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9615876.

Bell-Milam-Falls Water Supply Corporation Board will meet at Corporation Office, FM 485 West, Cameron, November 8, 1996 at 8:30 a.m. Information may be obtained from Dwayne Jekel, Manager, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9615869.

Community Action Committee of Victoria, Texas, Board of Directors, met at 1501 North DeLeon, Suite A, Victoria, November 7, 1996 at 7:00 p.m. Information may be obtained from Vicki Smith, 1501 North DeLeon, Suite A, Victoria, Texas 77902-2142. TRD-9615883.

East Texas Council of Governments, Executive Committee, met at Holly Lake Ranch Lodge, Hawkins, November 7, 1996, at 3:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9615879.

Dawson County Central Appraisal District, Board of Directors, met at 1806 Lubbock Highway, Lamesa, November 6, 1996 at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-2364. TRD-9615927.

Ellis County Appraisal District, Appraisal Review Board, met at 400 Ferris Avenue, Waxahachie, November 6, 1996 at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9615931.

Fort Bend Parkway Association, Board, met at 2929 Briarpark, Suite 600, Houston, November 7, 1996 at 4:30 p.m. Information may be obtained from Robert R. Randolph, 2701 First City Tower, 1001 Fannin, Houston, Texas 77002-6760, (713) 758-2380. TRD-9615901.

High Plains Underground Water Conservation District No. 1, (Revised Agenda) Board, met at 2930 Avenue Q Board Room, Lubbock, November 5, 1996 at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, Manager, High Plains Underground Water Conservation District No. 1, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9615881.

Hockley County Appraisal District, Appraisal Review Board, met at 1103 Houston Street, Levelland, November 5, 1996, at 7:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9615871.

Kempner Water Supply Corporation, Board of Directors Special Meeting, met at Highway 190, Kempner Water Supply Corporation, Kempner, November 5, 1996 at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9615870.

Nolan County Central Appraisal District, Board of Directors, will meet at the Nolan County Courthouse, Third Floor, Sweetwater, November 12, 1996 at 7:00 a.m. Information may be obtained from Patricia Davis, Chief Appraiser, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9615872.

Riceland Regional Mental Health Authority, Board of Trustees, met at 4910 Airport, Rosenberg, November 7, 1996 at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 North Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD-9615884.

Shackelford Water Supply Corporation, Directors, met at Fort Griffin Restaurant, Albany, November 6, 1996 at noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (817) 345-6868 or (915) 762-2575. TRD-9615877.

Taylor County Central Appraisal District, Board of Directors, will meet at 1534 South Treadaway, Abilene, November 13, 1996 at 3:30 p.m. Information may be obtained from Richard Petree, Chief Executive Officer, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381, extension 24, TRD-9615915.

Texas Council Risk Management Fund, Annual Meeting, will meet at the Red Lion Hotel, 6121 IH35 North, Room Salon E, Austin, November 14, 1996, at 3:30 p.m. Information may be obtained from Spencer McClure, Executive Director, 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-9615873.

Texas Council Risk Management Fund, Board of Trustees & Advisory Committee, will meet at the Red Lion Hotel, 6121 IH35 North, Room Salon D, Austin, November 15, 1996, at 8:00 a.m. Information may be obtained from Spencer McClure, Executive Director, 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-9615874.

West Central Texas Council of Governments/Career Stop, Advisory Committee, met at 809 North Judge Ely Boulevard, Abilene,

November 6, 1996 at 10:00 a.m. Information may be obtained from Cheryl Halliburton, Center Manager, 809 North Judge Ely Boulevard, Abilene, Texas 79601, (915) 672-5633. TRD-9615878.

Meetings filed November 4, 1996

Lee County Appraisal District, Appraisal Review Board, will meet at 218 East Richmond Street, Giddings, November 14, 1996 at 9:00 a.m. Information may be obtained from Delores Shaw, Recording Secretary, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9615976.

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.

America Public Works Association

Notice of Availability of a Request for Qualifications for Consultant Assistance with the Development of the Texas Nonpoint SourceBOOK

In accordance with the provisions of the Government Code, Chapter 2254, the Texas Chapter-American Public Works Association (TPWA) is seeking professional consultant assistance with developing a comprehensive information resource for urban storm water runoff water quality management for Texas communities. This comprehensive resource, the Texas Nonpoint SourceBOOK, is intended to enhance information found in existing BMP manuals and to provide the added dimension of Internet capability and utility. This project is being funded by the Texas Natural Resource Conservation Commission under a Section 319 grant from the SEPA, with local cash and in-kind match from participating local governments and others. The total budget for the two-year project is \$310,000, with up to \$185,000 allocated for professional consultant assistance.

A Project Management Committee of local government representatives has been appointed to guide this important effort. Several key areas have been identified where a professional consultant could be of particular assistance to the statewide program. Consultants will be expected to have the capabilities outlined in the Request for Qualifications.

The Project Management Committee will review the RFQ responses and select firms to be invited to submit a response to a Request for Proposals. Only firms who are so invited may respond to the RFP. The Committee will review the written responses to the RFP, interview the firms, and rank them. They will negotiate a contract, including a fair and reasonable price, with the top-ranked firm. If a satisfactory contract cannot be negotiated, the Committee will

proceed to the next most highly qualified firm pursuant to Vernon Article 664.4 - Professional Services Procurement Act.

It is the Committee's intent to engage professional consultant assistance as soon as possible. The grant proposal reflects a start of September 1, 1996, but this will be revised once the grant agreement is executed (anticipated November 1996).

Those interested in receiving the Request for Qualifications should contact John Promise, P.E., Director of Environmental Resources, North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9210. Copies of the RFQ can also be obtained from the following internet address: <http://www.nctcog.dst.tx.us/envir/water/storm/strmtask.html>. Fifteen (15) copies of a written response to this Request for Qualifications are to be received no later than 5:00 p.m. on Wednesday, December 4, 1996 at the NCTCOG offices. The Committee reserves the right to reject any or all responses to the RFQ.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615955
R. Michael Eastland
Executive Director
American Public Works Association
Filed: November 4, 1996

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Coastal Coordination Council

**Request for Proposals-Texas Coastal Management Program
Grants Program**

INTRODUCTION

The General Land Office, on behalf of the Coastal Coordination Council, is issuing this Request for Proposals to announce the potential availability of grant funds under the Texas Coastal Management Program (CMP). This serves as the official notice of the opening of the CMP Grants Program Cycle #2.

A federal award to the state of approximately \$2 million is expected in July 1997. The Coastal Coordination Council, which oversees the implementation of the CMP, has pledged to pass through 90% of the available funds to eligible entities in the coastal zone to support projects that implement and/or advance the CMP goals and policies.

DEADLINE

Grant applications must be received by 5:00 p.m., Monday, December 2, 1996, to be considered for funding under Grant Cycle #2. Grant applications must be mailed (regular, express, or certified) or hand-delivered to:

Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, Stephen F. Austin Building, Room 617, 1700 North Congress Avenue, Austin, Texas 78701-1495. Facsimile and electronic mail transmissions of grant applications will not be accepted.

ELIGIBLE ENTITIES

The following entities are eligible to receive funds under the Texas CMP Grants Program.

1. Incorporated cities in the coastal zone
2. County governments in the coastal zone
3. Texas state agencies
4. Texas public universities (including colleges and institutions of higher education)
5. Subdivisions of the state with jurisdiction in the coastal zone (e.g., navigation districts, port authorities, river authorities, and Soil and Water Conservation Districts with jurisdiction in the coastal zone)
6. Councils of governments and other regional governmental entities in the coastal zone
7. The Galveston Bay Estuary Program
8. The Corpus Christi Bay National Estuary Program and its successor(s)
9. Nonprofit organizations located in Texas that are nominated by an eligible entity in categories 1-8 above. A nomination may take the form of a resolution or letter from a responsible official of an entity in categories 1-8. The nominating entity is not expected to financially or administratively contribute to the management and implementation of the proposed project.

FUNDING CATEGORIES

The following funding categories have been established by the Council to ensure that projects funded under the CMP Grants Program further the goals and policies of the CMP. Grant applications must fit within one or more of the categories to be eligible for funding. The categories are not listed in order of preference.

A. Coastal Natural Hazards Response - Coastal natural hazards such as erosion and flooding are of great concern to coastal citizens and local governments. CMP monies can help enhance local

government's ability to respond to coastal natural hazards by funding local planning and management efforts.

B. Critical Areas Enhancement - Wetlands, submerged aquatic vegetation, oyster reefs, and tidal sand and mud flats are widely recognized as being of great value. Unfortunately, because these coastal natural resources are susceptible to many threats, they are still being lost and degraded. CMP funds can be used to help state and local governments manage critical areas within their jurisdictions.

C. Shoreline Access - Texas has some of the strongest laws in the nation protecting public access to the beach. However, increased shoreline development makes meeting the shoreline access needs of the public a challenge. CMP funds can be used to acquire access corridors and to provide improved shoreline services.

D. Waterfront Revitalization and Ecotourism Development - The Texas coast and coastal natural resources are valuable because they help fuel the economic engine of the state. CMP funds can be used to revitalize urban waterfronts to provide enhanced recreational opportunities and boost local economies and to develop local plans for ecotourism.

E. Permit Streamlining/Assistance and Governmental Coordination - A common complaint of coastal citizens and business persons is that the various levels of government do not act in concert. This fragmentation and incoordination result in time delays and last-minute changes in projects that cost businesses and individuals money. CMP funds can be used to streamline permitting processes and to provide technological and technical assistance.

F. Information and Data Availability - Government efforts to improve resource management are often hampered by lack of basic information. CMP funds can be used to develop the baseline data and maps necessary for sound implementation of the CMP goals and policies.

G. Public Education and Outreach - Conveying the meaning of laws and regulations to the regulated public in an appropriate format rarely receives high priority. CMP funds can be used to develop and distribute public education materials and to host public meetings, workshops, and conferences where technical information can be exchanged and training can be obtained.

PROPOSAL GUIDANCE AND APPLICATION FORM

To obtain a copy of the Proposal Guidance and Application Form, please contact Melissa Porter at (512) 475-1393 or 1-800-852-3224 (internet:melissa.porter@glo.state.tx.us) or Diana Ramirez at (512) 463-5058 (internet:diana.ramirez@glo.state.tx.us). Written requests for the Proposal Guidance and Application Form should be addressed to: Coastal Coordination Council, CMP Grants Program, c/o Texas General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas, 78701-1495. The Proposal Guidance and Application Form is also available on the GLO's Home Page on the World Wide Web at: http://www.glo.state.tx.us/res_mgmt/coastal/grants.html.

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

TRD-9615848

Gary Mauro

Chairman

Coastal Coordination Council

Filed: October 31, 1996

Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts proposed a repeal to §3.73 and §3.85. The rules appeared in the October 1, 1996, issue of the *Texas Register* (21 TexReg 9426).

On page 9426, the title of the rule numbers show 34 TAC §3.73 and §3.85, the text that follows is for the repeal of §§3.801-3.806. The text for the repeal of §3.73 and §3.85 does not appear in the *Texas Register*.

The sections should read as follows:

§3.73. Determination of Fair Market Value for Replaced Vehicles.

§3.85. Engaging in Business.

The same text is correctly printed under the title 34 TAC §§3.801-3.806.

The error was created in publication.



Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts and the Texas Prepaid Higher Education Tuition Board announce this notice of consultant contract award.

The consultant proposal request was published in the September 13, 1996, issue of the *Texas Register* (21 TexReg 8863).

The consultant will assist the Comptroller and the Texas Prepaid Higher Education Tuition Board with marketing agent services in connection with the administration of a prepaid higher education tuition program.

The contract is awarded to Sherry Matthews Advertising, 101 San Jacinto Boulevard, Austin, Texas 78701. The total dollar value of the contract is not to exceed \$1,250,000. The contract was executed October 25, 1996, and extends through October 24, 1997. Sherry Matthews Advertising is to assist the Comptroller in preparing a final report on or about December 15, 1996.

Issued in Austin, Texas, on November 1, 1996.

TRD-9615897

Arthur F. Lorton

Senior Legal Counsel

Comptroller of Public Accounts

Filed: November 1, 1996



Texas Education Agency

Notice of Public Hearing Regarding the Proposed Amendment to 19 Texas Administrative Code, Chapter 75, Subchapter AA, §75.1010, Procedures for Student Certification

The Texas Education Agency will hold a public hearing to solicit testimony from the public on the proposed amendment to 19 Texas Administrative Code, Chapter 75, Subchapter AA, §75.1010, Procedures for Student Certification.

The public hearing will be held on Monday, November 25, 1996, 9:00 a.m. to 5:00 p.m. or upon completion of testimony, whichever occurs first, in Room 1-100 of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas. Dr. Jay Cummings, associate commissioner, Office of Special Populations and Adults, will receive testimony at the hearing. The hearing is in response to a request for public hearing from the Driving School Association of Texas.

Registration will be taken in advance on a first-come, first-served basis by calling (512) 463-9322, Monday through Friday, 8:00 a.m. to 5:00 p.m. Registration will be taken on site the day of the hearing if time slots are still available.

Presenters are limited to a five-minute presentation and are asked to bring five written copies of their testimony. Testifiers will present in the order they were registered. Staff in the Division of Continuing Education recognize that access to the hearing may be limited; therefore, individuals who are unable to attend may send written comments to: Lauralea Bauer, Texas Education Agency, Division of Continuing Education, 1701 North Congress Avenue, Austin, Texas 78701-1494.

For additional information, individuals may contact Lauralea Bauer, Texas Education Agency, Division of Continuing Education, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9322.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615972

Criss Cloudt

Associate Commissioner for Policy Planning and Research

Texas Education Agency

Filed: November 4, 1996



Request for Application Concerning Optional Extended Year Program 1996-1997

Eligible Applicants. The Texas Education Agency (TEA) is accepting applications from public school districts in Texas identified as having a high concentration of educationally disadvantaged students to implement innovative strategies for students who are likely to be retained. School districts are eligible to apply individually or through a shared services arrangement. This is a non-competitive Request for Application (RFA). All districts eligible to receive funds will receive a copy of this RFA and an entitlement card. An education service center may serve as a fiscal agent of a shared services arrangement.

Description. The purpose of the Optional Extended Year Program is to reduce and ultimately eliminate retention. School districts receiving grant funds under this RFA must implement an extended-year program for a period not to exceed 30 instructional days. Students in kindergarten through Grade 8 who are identified as likely not to be promoted to the next grade level for the succeeding school year are eligible to participate.

Dates of Project. Applicants should plan for a starting date of no earlier than January 16, 1997, and an ending date of no later than August 29, 1997.

Project Amount. A total of \$51 million will be awarded. A school district's allocation is based on 10% of the school district's at-risk population in kindergarten through Grade 8 as reported to the Public Education Information Management System (PEIMS). Eligible school districts will receive an allocation of \$670 per eligible student. The

allocation shall be adjusted to reflect the actual number of students participating in the program as indicated by the school district on Schedule #4A of the funding application (SAS-206R97). The maximum entitlement will not exceed an amount that is in excess of 10% of the school district's at-risk student population for kindergarten through Grade 8; however, no school district shall receive less than \$5,500.

Selection Criteria. This is a non-competitive RFA. Only school districts that are identified as eligible to apply will receive a complete copy of RFA #701-97-001 and an entitlement card.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-97-001 will be mailed to eligible school districts. All other interested individuals may obtain a copy by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Ms. Hellen Bedgood, Division of Accelerated Instruction, Texas Education Agency, (512) 463-9374.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Thursday, January 16, 1997, to be considered. Districts not forwarding the application on time for receipt by TEA on January 16, 1997, will automatically relinquish their funds for reallocation.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615971

Criss Cloudt

Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: November 4, 1996



Request for Statement of Interest Concerning the Texas Library Connection Union

Eligible Applicants. One statement of interest must be submitted in the name of the school district for all individual libraries in the district submitting a Request for Statement of Interest (RFSOI). Each individual library that meets the following criteria is eligible to submit a statement of interest through its district to participate in the Texas Library Connection (TLC): 1. the library's records are in United States Machine Readable Catalog (USMARC) format; 2. the applying library is supervised by a certified librarian; 3. the applying library has any type of connection to the Internet; and 4. the applying library has equipment necessary to download and print files from the Internet. The statement of interest must be submitted in the name of the district or education service center (ESC) and signed by an authorized official of the district or ESC.

Description. The 74th Texas Legislature authorizes expenditures for the development of a statewide database of library holdings for

the purpose of improved access to information for all Texas school communities. Funding allocated for this purpose will be spent by the Texas Education Agency (TEA) to merge records of selected districts into the TLC union catalog; to deduplicate records; to enhance standardized records with Texas Assessment of Academic Skills objectives; and to clarify and implement guidelines for resource sharing.

Dates of Project. The TLC will continue to be developed during the 1996-1997 school year. Applicants should plan for a starting date of no earlier than February 14, 1997, and an ending date of no later than August 29, 1997.

Project Amount. Funds are for the purpose of the creation of the statewide database and will be distributed by the TEA to a selected contractor for the purposes of this project. Funds will not be provided to the participant. As many participants will be included in the project for the 1996-1997 school year as funding permits.

Selection Criteria. Participants will be selected from those who meet all the selection criteria and on the ability of each applicant to carry out all requirements contained in the RFSOI. Special consideration will be given to applicants that demonstrate their readiness to join a catalog as exemplified through the statement of interest process. The TEA reserves the right to select from the highest ranking statements of interest those that address all requirements in the RFSOI. The TEA also reserves the right to select districts to participate in this project that represent diverse geographical locations, size, wealth, and student body.

The TEA is not obligated to approve a statement of interest or endorse any statement of interest submitted in response to this RFSOI. This RFSOI does not commit the TEA to pay any costs in conjunction with this RFSOI.

Requesting the Statement of Interest. A complete copy of RFSOI #701-97-002 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, or by calling (512) 463-9304. Please refer to the RFSOI number in your request.

Further Information. For clarifying information about this RFSOI, contact Gloria McClanahan, glori@m@tenet.edu, or Lisa Chung, lchung@tenet.edu, Division of Instructional Technology, Texas Education Agency, (512) 463-9401.

Deadline for Receipt of Statements of Interest. Statements of Interest must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Wednesday, January 15, 1997, to be considered.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615973

Criss Cloudt

Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: November 4, 1996



Texas Environmental Awareness Network

Notice of Monthly Meeting

Tuesday, November 12, 1996, 8:30 a.m.

TEAN will meet at its usual location, the Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, TX 78746.

Agenda

- 1.Approval of Minutes for meeting of October 8, 1996.
- 2.Comments on CAST.
- 3.Production decisions for Eye on Earth.
- 4.TEEAC affiliated sites session.
- 5.Guidelines for environmental education.
- 6.Announcements.

For information about the meeting or to place an item on the agenda, contact John Hamilton, TEAN Co-Chair, by mail at General Land Office, 1700 Congress Avenue, Austin, TX 78701, or by phone at (512) 463-5310.

Issued in Austin, Texas, on November 1, 1996.

TRD-9615917

Sigrid Clift

Interim Secretary

Texas Environmental Awareness Network

Filed: November 1, 1996

Office of the Governor

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B, of the Texas Government Code, the Office of the Governor has contracted with David M. Griffith & Associates, LTD., 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

The Council on Competitive Government needed assistance in developing the cost baseline for the Integrated Enrollment System Planning Project. Under the provisions outlined in §2254.025, of the Texas Government Code, the time constraints surrounding the completion of this project necessitated an emergency waiver.

The contractor will develop the cost baseline for the Council on Competitive Government's Integrated Enrollment System Planning Project according to the methodology outlined in the Council on Competitive Government's Cost Methodology. The original contract was executed effective January 29, 1996, in an amount not to exceed \$90,000. The contract was amended on October 1, 1996, to increase the fee for services by \$25,000.

Issued in Austin, Texas, on October 25, 1996.

TRD-9615854

Pete Wassdorf

Deputy General Counsel

Office of the Governor

Filed: October 31, 1996

Texas Department of Health

Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Garland Dental Associates, Inc. (registrant-R08361) of Garland to cease and desist using the S. S. White dental x-ray unit (Model Number 90W, Serial Number 21405) and the S. S. White dental x-ray unit (Model Number 24244001Y, Serial Number Y00869) to perform dental intraoral x-ray procedures until all the health-related violations found during a recent inspection of the facility have been corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct the violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 4, 1996.

TRD-9615977

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 4, 1996

Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: The Chiropractic Wellness Center, Sugarland, R21766; Nelson Chiropractic Clinic, Amarillo, R21207; Saint Francis Radiology Services, Houston, R20332; Kennedy Chiropractic Center, Conroe, R19622; Allen and Allen Chiropractic, Plano, R19600; Carlos J. Gonzalez, M.D., Houston, R13150; Advanced Davenport, Inc., Houston, R12013; Goolsby Testing Laboratories, Inc., Humble, R13622; Southland X-ray Services, Inc., Houston, R15930; Health Evaluation Programs, Inc., Park Ridge, Illinois, R18833; Radiology Systems, Incorporated, San Diego, California, R21609; Danforth, Inc., Texas City, Z00287; Randy A. Parham, D.D.S., Fort Worth, R21812.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day

period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 4, 1996.

TRD-9615980
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 4, 1996

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: The PLM Company, Plano, L04364; Caprock Imaging Center, Lubbock, L04557; Joseph B. Wharton, Dallas, L04839.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 4, 1996.

TRD-9615979
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 4, 1996

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Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Impoundment Order issued August 26, 1996, to Jim McCarty, D.C., 1025 Newberry, Suite A, Richardson, Texas 75080, holder of Certificate of Registration Number R18215 (Expired).

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on November 4, 1996.

TRD-9615978
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 4, 1996

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Texas Department of Housing and Community Affairs

Announcement of Public Comment Period for 1997 State Low Income Housing Plan and Annual Report Draft for Public Comment

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of public comment period concerning the 1997 State Low Income Housing Plan and Annual Report *Draft for Public Comment* (the Plan). This comment period begins November 15, 1996 and ends December 16, 1996. The Plan is prepared in accordance with Government Code, §§2306.0721-2306.0723.

The Plan is one of three comprehensive planning documents the Texas Department Housing and Community Affairs is required to submit annually. It is the first document of its kind among the states and offers policymakers and housing providers a comprehensive reference on statewide housing need, housing resources, and patterns of funding allocation. The Plan serves in the following capacities: Provides an overview of statewide housing needs; reports on the 20 programs administered by TDHCA; provides the TDHCA's policies and allocations planned for the upcoming program year; provides the TDHCA's housing programs funding levels; and reports on the distribution of TDHCA's resources in the previous fiscal year.

Copies of the 1997 State Low Income Housing Plan and Annual Report *Draft for Public Comment* will be available after November 12, 1996 at the following locations: **ABILENE**, Abilene Public Library, 915/676-6026; **ALPINE**, Sul Ross State University, 915/837-8123; **AMARILLO**, Amarillo Public Library, 806/378-3054; **ARLINGTON**, University of Texas at Arlington, 817/273-3405; **AUSTIN**, Legislative Reference Library, 512/463-1252, Texas State Library, 512/463-5455, University of Texas at Austin Center for American History, 512/495-4452; **BEAUMONT**, Beaumont Public Library, 409/838-6606, Lamar University, 409/880-8130; **BROWNSVILLE**, University of Texas at Brownsville, 210/544-8221; **CANYON**, West Texas A&M University, 806/656-2204; **COLLEGE STATION**, Texas A&M University, 409/845-5310; **COMMERCE**, East Texas State University, 903/886-5734; **CORPUS CHRISTI**, Corpus Christi Public Library, 512/880-7005, Texas A&M University-Corpus Christi, 512/994-2687; **DALLAS**, Dallas Public Library, 214/670-1465, Southern Methodist University, 214/768-2561; **DENTON**, Texas Woman's University, 817/898-3708, University of North Texas, 817/565-3269; **EDINBURG**, University of Texas-Pan American, 210/316-7054; **EL PASO**, El Paso Public Library, 915/543-5475, University of Texas at El Paso, 915/747-6702; **FORT WORTH**, Fort Worth Public Library, 817/871-7721, Texas Christian University, 817/921-7669; **HOUSTON**, Houston Public Library, 713/

247-1667, Rice University, 712/285-5483, Texas Southern University, 713/527-7147, University of Houston, 713/743-9781, University of Houston- Clear Lake, 713/283-3914; **HUNTSVILLE**, Sam Houston State University, 409/294-1629; **KINGSVILLE**, Texas A&M University- Kingsville, 512/595-2918; **LAREDO**, Texas A&M International University, 210/326-2118; **LUBBOCK**, Texas Tech University, 806/742-2268; **NACOGDOCHES**, Stephen F. Austin State University, 409/568-1574; **ODESSA**, Ector County Library, 915/337-2501, University of Texas of the Permian Basin, 915/552/2407; **PRAIRIE VIEW**, Prairie View A&M University, 409/857-2612; **RICHARDSON**, University of Texas at Dallas, 214/883-2627; **SAN ANGELO**, Angelo State University, 915/942-2300; **SAN ANTONIO**, Saint Mary's University, 210/431-2299 x1312, San Antonio Central Library, 210/207-2695, Trinity University, 210/736-7345, University of Texas at San Antonio, 210/691-5506; **SAN MARCOS**, Southwest Texas State University, 512/245-3686; **STEPHENVILLE**, Tarleton State University, 817/968-9869; **TYLER**, University of Texas at Tyler, 903/566-7167; **VICTORIA**, University of Houston at Victoria, 512/788-6283; **WACO**, Baylor University, 817/755-1268; **WICHITA FALLS**, Midwestern State University, 817/689-4165; **OUT OF STATE**, Library of Congress, State Documents Section, Exchange and Gift Division, Washington, DC 20540.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941. For more information or to order copies of the 1997 State Low Income Housing Plan and Annual Report *Draft for Public Comment* please contact the Housing Resource Center at (512) 475-3972.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615961

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs
Filed: November 4, 1996

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Announcement of Public Comment Period for 1997 State of Texas Consolidated Plan One-Year Action Plan *Draft for Public Comment*

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of public comment period concerning the 1997 State of Texas Consolidated Plan One Year Action Plan *Draft for Public Comment* (the Plan). This 32 day comment period will begin November 15, 1996 and end on December 16, 1996. The Plan is submitted in compliance with 24 CFR 91.320 Consolidated Plan submissions for Community Planning and Development Programs made effective on January 5, 1995.

The Plan serves in the following capacities: Describes the federal resources expected to be available for use by the TDHCA; indicates resources from private and non-federal public sources expected to be made available to address the needs identified in the plan; a description of the State's method for distributing funds to local governments and non-profit organizations, and how those funds will address the priority needs and specific objectives described in the 1996 State of Texas Consolidated Plan; a description of the geographic areas of the State (including areas of minority concentration) in which it will direct assistance during the ensuing program year; activities planned to address the needs of the homeless,

including emergency shelter and transitional housing; actions planned for the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, remove barriers to affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies and foster public housing resident initiatives.

In addition, the plan must include the following specific information: Regarding Community Development Block Grants (CDBG): the Plan must include "urgent needs" activity, and the method of distribution and description of all selection criteria. The HOME Investment Partnerships Act, which is Title II of the National Affordable Housing Act (HOME) program shall describe other forms of investment that are not described in §92.205(b). In addition the HOME program must state the guidelines for resale or recapture if the State intends to use HOME funds for homebuyers. Concerning the Emergency Shelter Grant Program (ESG): state the process for awarding grants and describe how the state intends to make allocations available to units of local governments and nonprofit organizations. Lastly, concerning Housing Opportunities for Persons With AIDS (HOPWA), state the method of selecting project sponsors.

Copies of the 1997 State of Texas Consolidated Plan One Year Action Plan *Draft for Public Comment* will be available after November 12, 1996 at the following locations: **ABILENE**, Abilene Public Library, 915/676-6026; **ALPINE**, Sul Ross State University, 915/837-8123; **AMARILLO**, Amarillo Public Library, 806/378-3054; **ARLINGTON**, University of Texas at Arlington, 817/273-3405; **AUSTIN**, Legislative Reference Library, 512/463-1252, Texas State Library, 512/463-5455, University of Texas at Austin Center for American History, 512/495-4452; **BEAUMONT**, Beaumont Public Library, 409/838-6606, Lamar University, 409/880-8130; **BROWNSVILLE**, University of Texas at Brownsville, 210/544-8221; **CANYON**, West Texas A&M University, 806/656-2204; **COLLEGE STATION**, Texas A&M University, 409/845-5310; **COMMERCE**, East Texas State University, 903/886-5734; **CORPUS CHRISTI**, Corpus Christi Public Library, 512/880-7005, Texas A&M University-Corpus Christi, 512/994-2687; **DALLAS**, Dallas Public Library, 214/670-1465, Southern Methodist University, 214/768-2561; **DENTON**, Texas Woman's University, 817/898-3708, University of North Texas, 817/565-3269; **EDINBURG**, University of Texas- Pan American, 210/316-7054; **EL PASO**, El Paso Public Library, 915/543-5475, University of Texas at El Paso, 915/747-6702; **FORT WORTH**, Fort Worth Public Library, 817/871-7721, Texas Christian University, 817/921-7669; **HOUSTON**, Houston Public Library, 713/247-1667, Rice University, 712/285-5483, Texas Southern University, 713/527-7147, University of Houston, 713/743-9781, University of Houston-Clear Lake, 713/283-3914; **HUNTSVILLE**, Sam Houston State University, 409/294-1629; **KINGSVILLE**, Texas A&M University-Kingsville, 512/595-2918; **LAREDO**, Texas A&M International University, 210/326-2118; **LUBBOCK**, Texas Tech University, 806/742-2268; **NACOGDOCHES**, Stephen F. Austin State University, 409/568-1574; **ODESSA**, Ector County Library, 915/337-2501, University of Texas of the Permian Basin, 915/552/2407; **PRAIRIE VIEW**, Prairie View A&M University, 409/857-2612; **RICHARDSON**, University of Texas at Dallas, 214/883-2627; **SAN ANGELO**, Angelo State University, 915/942-2300; **SAN ANTONIO**, Saint Mary's University, 210/431-2299 x1312, San Antonio Central Library, 210/207-2695, Trinity University, 210/736-7345, University of Texas at San Antonio, 210/691-5506; **SAN MARCOS**, Southwest Texas

State University, 512/245-3686; **STEPHENVILLE**, Tarleton State University, 817/968-9869; **TYLER**, University of Texas at Tyler, 903/566-7167; **VICTORIA**, University of Houston at Victoria, 512/788-6283; **WACO**, Baylor University, 817/755-1268; **WICHITA FALLS**, Midwestern State University, 817/689-4165; **OUT OF STATE**, Library of Congress, State Documents Section, Exchange and Gift Division, Washington, DC 20540.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941. For more information, or to order copies of the 1997 State of Texas Consolidated Plan One Year Action Plan *Draft for Public Comment* please contact the Housing Resource Center at (512) 475-3972.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615962

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 4, 1996

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Notice of Public Hearing for 1997 State Low Income Housing Plan and Annual Report *Draft For Public Comment*

The Texas Department of Housing and Community Affairs (TDHCA) announces the scheduling of public hearings regarding the 1997 State Low Income Housing Plan and Annual Report *Draft for Public Comment*.

The meetings will be held in the following cities: Austin, Amarillo, Brownsville, Dallas, Houston, Lufkin, San Antonio, and Socorro (El Paso). The dates, times, and specific locations will be published in a week.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941. For more information or to order copies of the 1997 State Low Income Housing Plan and Annual Report *Draft for Public Comment* please contact the Housing Resource Center at (512) 475-3972. Individuals who require auxiliary aids in order to attend the meetings should contact Aurora Carvajal, ADA Responsible Employee at (512) 475-3822, or Relay Texas at 1-800-725-2989 at least two days prior to the hearing you will be attending.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615963

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 4, 1996

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Notice of Public Hearing for the 1997 State of Texas Consolidated Plan One-Year Action Plan *Draft for Public Comment*

The Texas Department of Housing and Community Affairs (TDHCA) announces the scheduling of public hearings regarding the 1997 Consolidated Plan One Year-Action Plan *Draft for Public Comment*.

The meetings will be held in the following cities: Austin, Dallas, Houston, Lufkin, San Antonio, and Socorro (El Paso). The dates, times, and specific locations will be published in a week.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941. For more information or to order copies of the 1997 State of Texas Consolidated Plan-One Year Action Plan *Draft for Public Comment* please contact the Housing Resource Center at (512) 475-3972. Individuals who require auxiliary aids in order to attend the meetings should contact Aurora Carvajal, ADA Responsible Employee at (512) 475-3822, or Relay Texas at 1-800-725-2989 at least two days prior to the hearing you will be attending.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615964

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: November 4, 1996

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Texas Department of Human Services

Notice of Public Hearing-Cost Containment in the Purchase of Community

The Health and Human Services Commission and the Texas Department of Human Services will conduct a public hearing to solicit input on issues facing the state of Texas regarding cost containment in the purchase of community based client services in Long Term Care.

The public hearing will be held on November 20, 1996, from 1:00 p.m. to 5:00 p.m., in the Public Hearing Room of the John H. Winters Center (701 W. 51st Street, Austin, Texas). A visitor's pass will be issued at the reception desk in the lobby.

Contact Person: Please contact Jacqueline Z. Johnson, (512) 438-4970.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services, please contact Bill Farnsworth (512) 438-3286 by November 15, 1996, so that appropriate arrangements can be made.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615967

Glen Scott

General Counsel, Legal Services

Texas Department of Human Services

Filed: November 4, 1996

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Texas Department of Insurance

Notices

On October 31, 1996, in Order Number 96-1266, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan Association, Plan of Operation.

For copies of Commissioner's order number 96-1266 and the Texas Automobile Insurance Association Plan of Operation, contact Angie Arizpe at (512) 463-6326 (refer to file number A-1096-43).

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

TRD-9615928

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 1, 1996



The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Republic Insurance Company proposing rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing a rate of +25% for territory 16C, coverage forms HOA, HOB, and HOC only, and a rate of +40% for all other territories and all coverage forms for homeowners insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, at the Texas Department of Insurance, MC 104-5A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on November 1, 1996.

TRD-9615930

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 1, 1996



Texas Natural Resource Conservation Commission

Notice Of Receipt Of Application And Declaration Of Administrative Completeness For Municipal Solid Waste Management Facility Permits For The Week Ending November 1, 1996

APPLICATION BY BLUE FLATS DISPOSAL L.L.C., INC.; Proposed Permit Number MSW2262, authorizing a Type I (Landfill) municipal solid waste management facility. The proposed site covers about 140 acres of land and is to daily receive about 640 tons of waste. The proposed site is to be located on the north side of Interstate 20 at the Blue Flats/Panama Road exit, about four miles east of the city of Gordon, in Palo Pinto County, Texas.

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 application number, TNRCC docket number or other recognizable reference to the application; (3) the statement if we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a

description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Issued in Austin, Texas, on November 1, 1996.

TRD-9615819

Mamie M. Black

Acting Chief Clerk

Texas Natural Resource Conservation Commission

Filed: October 31, 1996



Provisionally-Issued Temporary Permits to Appropriate State Water for the Week ending November 1, 1996

Listed below are permits issued during the period of November 1, 1996

Application Number TA-7730 by QL Corp dba Quick Line Service Company for diversion of 4 acre-feet in a 3-month period for mining use. Water may be diverted from near the FM 2991 crossing of the Sabine River, approximately 20 miles northeast of Newton, Newton County, Texas, Sabine River Basin.

Application Number TA-7731 by Brown & Root, Inc. for diversion of one year period for industrial use. Water may be diverted from Green Bayou, just east of Interstate Highway 10 approximately 10 miles east of Houston in Harris County, Texas, San Jacinto River Basin.

Application Number TA-7732 by D.L. Lenon, Incorporated for diversion of 1 acre-foot in a one year period for industrial (highway construction) use. Water may be diverted from No Name Creek, at the stream crossing of SH 34, approximately 5.5 miles northwest of Mount Vernon in Franklin County, Texas, Sulphur 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, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 787311, Telephone (512) 239-3300.

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

TRD-9615818

Mamie M. Black
Acting Chief Clerk

Texas Natural Resource Conservation Commission
Filed: October 31, 1996

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Public Utility Commission

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 a 25 station addition to the existing PLEXAR-Custom Service for Amarillo ISD in Amarillo, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for 25 Station Addition to Existing PLEXAR-Custom Service for Amarillo ISD in Amarillo, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16586.

The Application. Southwestern Bell Telephone Company is requesting approval for a 25 station addition to an existing PLEXAR-Custom service for Amarillo ISD in Amarillo, Texas. The geographic service market for this specific service is the Amarillo, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with Texas telephones (TTY) may contact the Commission at (512) 936-7136.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615946

Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: November 4, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a 25 station addition to the existing PLEXAR-Custom Service for Amarillo ISD in Amarillo, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for 25 Station Addition to Existing PLEXAR-Custom Service for Amarillo ISD in Amarillo, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16586.

The Application. Southwestern Bell Telephone Company is requesting approval for a 25 station addition to an existing PLEXAR-Custom service for Amarillo ISD in Amarillo, Texas. The geographic service market for this specific service is the Amarillo, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with Texas telephones (TTY) may contact the Commission at (512) 936-7136.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615947

Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: November 4, 1996

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of new PLEXAR-Custom Service for SW Oncology Group - CTRC in San Antonio, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for new PLEXAR-Custom Service for SW Oncology Group - CTRC in San Antonio, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16572.

The Application. Southwestern Bell Telephone Company is requesting approval for new PLEXAR-Custom service for SW Oncology Group - CTRC in San Antonio, Texas. The geographic service market for this specific service is the San Antonio, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Consumer Affairs Section at (512) 936-7120. Hearing and speech-impaired individuals with Texas telephones (TTY) may contact the Commission at (512) 936-7136.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615948

Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: November 4, 1996

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Public Notice

On October 21, 1996, Southwestern Bell Telephone Company (SWB) filed notice to file LRIC studies pursuant to Substantive Rule §23.91 for the following service studies: Private Line Voice Grade Services; (2) Special Access-Voice Grade Service; (3) PLEXARSM I Features; (4) Digital Services-Megalink I-2.4 kbps; (5) Digital Services-Megalink I-4.8 kbps; (6) Digital Services-Megalink I-9.6 kbps; (7) Digital Services-Megalink I-19.2 kbps; and Digital Services-Megalink I-56 kbps. SWB intends to file Category Studies for the following: (1) Ancillary Services; (2) Switching and Switching Functions; and (3) Shared Switching. SWB intends to file the

following Family studies: (1) Access Services; (2) PLEXARSM; (3) Operator Services; (4) Coin; and (5) Usage Services. SWB will file these studies in Project Numbers 12475 and 12481. Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Studies Workplans Pursuant to Public Utility Commission Substantive Rule 23.91. SWB expects to file these studies on November 8, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by December 20, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission Office of Consumer Affairs at (512) 936-7120. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615949

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 4, 1996

State Securities Board

Correction of Error

The State Securities Board proposed an amendment to §113.12 and new §§129.1-129.9. The rules appeared in the October 15, 1996, issue of the *Texas Register* (21 TexReg 10143).

On page 10143, §113.12(7), line one, "(7)" should be bold text.

On page 10144, §129.1(b)(5)(B), line three, subparagraph (C) should not be included in subparagraph (B). The subparagraphs should read as follows:

(B) any person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by such other person;

(C) any person directly or indirectly controlling, controlled by, or under common control with such other person;

Texas Youth Commission

TYC Notice of Purchase of Residential Services

The Texas Youth Commission is in the process of locating secure residential beds from private vendors to relieve the condition of overpopulation in TYC programs. The focus of this endeavor is to provide initial placement of newly committed youth in a secure residential facility in increments of ten to 458 youth. Beds need to be available immediately and program must be licensed or certified by the proper licensing authority.

The following is a profile of the youth that may be served:

- (1) Average age of 15 to 16 years and 8 months.
- (2) Average reading level of 5th grade, 9 months.
- (3) Average math level of 5th grade, 8 months.
- (4) 80% committed for a felon offense.
- (5) 41% known gang members.
- (6) Average IQ of 91.

If you are interested in providing basic residential services in a secure setting to TYC youth for a period of three to six months, please contact: Paula Morelock, Director of Contract and Support Programs, Texas Youth Commission, P. O. Box 4260, Austin, Texas 78765.

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

TRD-9615781

Steve Robinson

Executive Director

Texas Youth Commission

Filed: October 30, 1996

November - December 1996 Publication Schedule

The following is the November-December 1996 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. No issues will be published on December 3, and December 31. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
81 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
82 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
83 Friday, November 8	Wednesday, October 30	Monday, November 4	Monday, November 4
84 Tuesday, November 12	Monday, November 4	Wednesday, November 6	Wednesday, November 6
85 Friday, November 15	Wednesday, November 6	*Friday, November 8	*Friday, November 8
86 Tuesday, November 19	*Tuesday, November 12	Wednesday, November 13	Wednesday, November 13
87 Friday, November 22	Wednesday, November 13	Monday, November 18	Monday, November 18
88 Tuesday, November 26	Monday, November 18	Wednesday, November 20	Wednesday, November 20
89 Friday, November 29	Wednesday, November 20	Monday, November 25	Monday, November 25
Tuesday, December 3	<i>No Issue Published</i>		
90 Friday, December 6	Wednesday, November 27	Monday, December 2	Monday, December 2
91 Tuesday, December 10	Monday, December 2	Wednesday, December 4	Wednesday, December 4
92 Friday, December 13	Wednesday, December 4	Monday, December 9	Monday, December 9
93 Tuesday, December 17	Monday, December 9	Wednesday, December 11	Wednesday, December 11
94 Friday, December 20	Wednesday, December 11	Monday, December 16	Monday, December 16
95 Tuesday, December 24	Monday, December 16	Wednesday, December 18	Wednesday, December 18

96 Friday, December 27	Wednesday, December 18	Monday, December 23	Monday, December 23
Tuesday, December 31	<i>No Issue Published</i>		

January - December 1997 Publication Schedule

The following is the January-December 1997 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. No issues will be published on May 30, November 14, December 2, and December 30. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
1 Friday, January 3	*Monday, December 23	Monday, December 30	Monday, December 30
2 Tuesday, January 7	Monday, December 30	*Tuesday, December 31	*Tuesday, December 31
3 Friday, January 10	*Tuesday, December 31	Monday, January 6	Monday, January 6
4 Tuesday, January 14	Monday, January 6	Wednesday, January 8	Wednesday, January 8
5 Friday, January 17	Wednesday, January 8	Monday, January 13	Monday, January 13
6 Tuesday, January 21	Monday, January 13	Wednesday, January 15	Wednesday, January 15
7 Friday, January 24	Wednesday, January 15	*Friday, January 17	*Friday, January 17
Tuesday, January 28	<i>1996 Annual Index</i>		
8 Friday, January 31	Wednesday, January 22	Monday, January 27	Monday, January 27
9 Tuesday, February 4	Monday, January 27	Wednesday, January 29	Wednesday, January 29
10 Friday, February 7	Wednesday, January 29	Monday, February 3	Monday, February 3
11 Tuesday, February 11	Monday, February 3	Wednesday, February 5	Wednesday, February 5
12 Friday, February 14	Wednesday, February 5	Monday, February 10	Monday, February 10
13 Tuesday, February 18	Monday, February 10	Wednesday, February 12	Wednesday, February 12
14 Friday, February 21	Wednesday, February 12	*Friday, February 14	*Friday, February 14
15 Tuesday, February 25	*Friday, February 14	Wednesday, February 19	Wednesday, February 19

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
16 Friday, February 28	Wednesday, February 19	Monday, February 24	Monday, February 24
17 Tuesday, March 4	Monday, February 24	Wednesday, February 26	Wednesday, February 26
18 Friday, March 7	Wednesday, February 26	Monday, March 3	Monday, March 3
19 Tuesday, March 11	Monday, March 3	Wednesday, March 5	Wednesday, March 5
20 Friday, March 14	Wednesday, March 5	Monday, March 10	Monday, March 10
21 Tuesday, March 18	Monday, March 10	Wednesday, March 12	Wednesday, March 12
22 Friday, March 21	Wednesday, March 12	Monday, March 17	Monday, March 17
23 Tuesday, March 25	Monday, March 17	Wednesday, March 19	Wednesday, March 19
24 Friday, March 28	Wednesday, March 19	Monday, March 24	Monday, March 24
25 Tuesday, April 1	Monday, March 24	Wednesday, March 26	Wednesday, March 26
26 Friday, April 4	Wednesday, March 26	Monday, March 31	Monday, March 31
Tuesday, April 8	<i>First Quarterly Index</i>		
27 Friday, April 11	Wednesday, April 2	Monday, April 7	Monday, April 7
28 Tuesday, April 15	Monday, April 7	Wednesday, April 9	Wednesday, April 9
29 Friday, April 18	Wednesday, April 9	Monday, April 14	Monday, April 14
30 Tuesday, April 22	Monday, April 14	Wednesday, April 16	Wednesday, April 16
31 Friday, April 25	Wednesday, April 16	Monday, April 21	Monday, April 21
32 Tuesday, April 29	Monday, April 21	Wednesday, April 23	Wednesday, April 23
33 Friday, May 2	Wednesday, April 23	Monday, April 28	Monday, April 28
34 Tuesday, May 6	Monday, April 28	Wednesday, April 30	Wednesday, April 30
35 Friday, May 9	Wednesday, April 30	Monday, May 5	Monday, May 5
36 Tuesday, May 13	Monday, May 5	Wednesday, May 7	Wednesday, May 7
37 Friday, May 16	Wednesday, May 7	Monday, May 12	Monday, May 12
38 Tuesday, May 20	Monday, May 12	Wednesday, May 14	Wednesday, May 14

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
39 Friday, May 23	Wednesday, May 14	Monday, May 19	Monday, May 19
40 Tuesday, May 27	Monday, May 19	Wednesday, May 21	Wednesday, May 21
Friday, May 30	<i>No Issue Published</i>		
41 Tuesday, June 3	*Friday, May 23	Wednesday, May 28	Wednesday, May 28
42 Friday, June 6	Wednesday, May 28	Monday, June 2	Monday, June 2
43 Tuesday, June 10	Monday, June 2	Wednesday, June 4	Wednesday, June 4
44 Friday, June 13	Wednesday, June 4	Monday, June 9	Monday, June 9
45 Tuesday, June 17	Monday, June 9	Wednesday, June 11	Wednesday, June 11
46 Friday, June 20	Wednesday, June 11	Monday, June 16	Monday, June 16
47 Tuesday, June 24	Monday, June 16	Wednesday, June 18	Wednesday, June 18
48 Friday, June 27	Wednesday, June 18	Monday, June 23	Monday, June 23
49 Tuesday, July 1	Monday, June 23	Wednesday, June 25	Wednesday, June 25
50 Friday, July 4	Wednesday, June 25	Monday, June 30	Monday, June 30
51 Tuesday, July 8	Monday, June 30	Wednesday, July 2	Wednesday, July 2
Friday, July 11	<i>Second Quarterly Index</i>		
52 Tuesday, July 15	Monday, July 7	Wednesday, July 9	Wednesday, July 9
53 Friday, July 18	Wednesday, July 9	Monday, July 14	Monday, July 14
54 Tuesday, July 22	Monday, July 14	Wednesday, July 16	Wednesday, July 16
55 Friday, July 25	Wednesday, July 16	Monday, July 21	Monday, July 21
56 Tuesday, July 29	Monday, July 21	Wednesday, July 23	Wednesday, July 23
57 Friday, August 1	Wednesday, July 23	Monday, July 28	Monday, July 28
58 Tuesday, August 5	Monday, July 28	Wednesday, July 30	Wednesday, July 30
59 Friday, August 8	Wednesday, July 30	Monday, August 4	Monday, August 4
60 Tuesday, August 12	Monday, August 4	Wednesday, August 6	Wednesday, August 6

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
61 Friday, August 15	Wednesday, August 6	Monday, August 11	Monday, August 11
62 Tuesday, August 19	Monday, August 11	Wednesday, August 13	Wednesday, August 13
63 Friday, August 22	Wednesday, August 13	Monday, August 18	Monday, August 18
64 Tuesday, August 26	Monday, August 18	Wednesday, August 20	Wednesday, August 20
65 Friday, August 29	Wednesday, August 20	Monday, August 25	Monday, August 25
66 Tuesday, September 2	Monday, August 25	Wednesday, August 27	Wednesday, August 27
67 Friday, September 5	Wednesday, August 27	*Friday, August 29	*Friday, August 29
68 Tuesday, September 9	*Friday, August 29	Wednesday, September 3	Wednesday, September 3
69 Friday, September 12	Wednesday, September 3	Monday, September 8	Monday, September 8
70 Tuesday, September 16	Monday, September 8	Wednesday, September 10	Wednesday, September 10
71 Friday, September 19	Wednesday, September 10	Monday, September 15	Monday, September 15
72 Tuesday, September 23	Monday, September 15	Wednesday, September 17	Wednesday, September 17
73 Friday, September 26	Wednesday, September 17	Monday, September 22	Monday, September 22
74 Tuesday, September 30	Monday, September 22	Wednesday, September 24	Wednesday, September 24
75 Friday, October 3	Wednesday, September 24	Monday, September 29	Monday, September 29
Tuesday, October 7	<i>Third Quarterly Index</i>		
76 Friday, October 10	Wednesday, October 1	Monday, October 6	Monday, October 6
77 Tuesday, October 14	Monday, October 6	Wednesday, October 8	Wednesday, October 8
78 Friday, October 17	Wednesday, October 8	Monday, October 13	Monday, October 13
79 Tuesday, October 21	Monday, October 13	Wednesday, October 15	Wednesday, October 15
80 Friday, October 24	Wednesday, October 15	Monday, October 20	Monday, October 20
81 Tuesday, October 28	Monday, October 20	Wednesday, October 22	Wednesday, October 22
82 Friday, October 31	Wednesday, October 22	Monday, October 27	Monday, October 27
83 Tuesday, November 4	Monday, October 27	Wednesday, October 29	Wednesday, October 29

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
84 Friday, November 7	Wednesday, October 29	Monday, November 3	Monday, November 3
85 Tuesday, November 11	Monday, November 3	Wednesday, November 5	Wednesday, November 5
Friday, November 14	<i>No Issue Published</i>		
86 Tuesday, November 18	Monday, November 10	Wednesday, November 12	Wednesday, November 12
87 Friday, November 21	Wednesday, November 12	Monday, November 17	Monday, November 17
88 Tuesday, November 25	Monday, November 17	Wednesday, November 19	Wednesday, November 19
89 Friday, November 28	Wednesday, November 19	Monday, November 24	Monday, November 24
Tuesday, December 2	<i>No Issue Published</i>		
90 Friday, December 5	Wednesday, November 26	Monday, December 1	Monday, December 1
91 Tuesday, December 9	Monday, December 1	Wednesday, December 3	Wednesday, December 3
92 Friday, December 12	Wednesday, December 3	Monday, December 8	Monday, December 8
93 Tuesday, December 16	Monday, December 8	Wednesday, December 10	Wednesday, December 10
94 Friday, December 19	Wednesday, December 10	Monday, December 15	Monday, December 15
95 Tuesday, December 23	Monday, December 15	Wednesday, December 17	Wednesday, December 17
96 Friday, December 26	Wednesday, December 17	Monday, December 22	Monday, December 22
Tuesday, December 30	<i>No Issue Published</i>		

How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

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

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

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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

Open Meetings - notices of open meetings.

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

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

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

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

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

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as SCII files on diskette. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official

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

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

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

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