

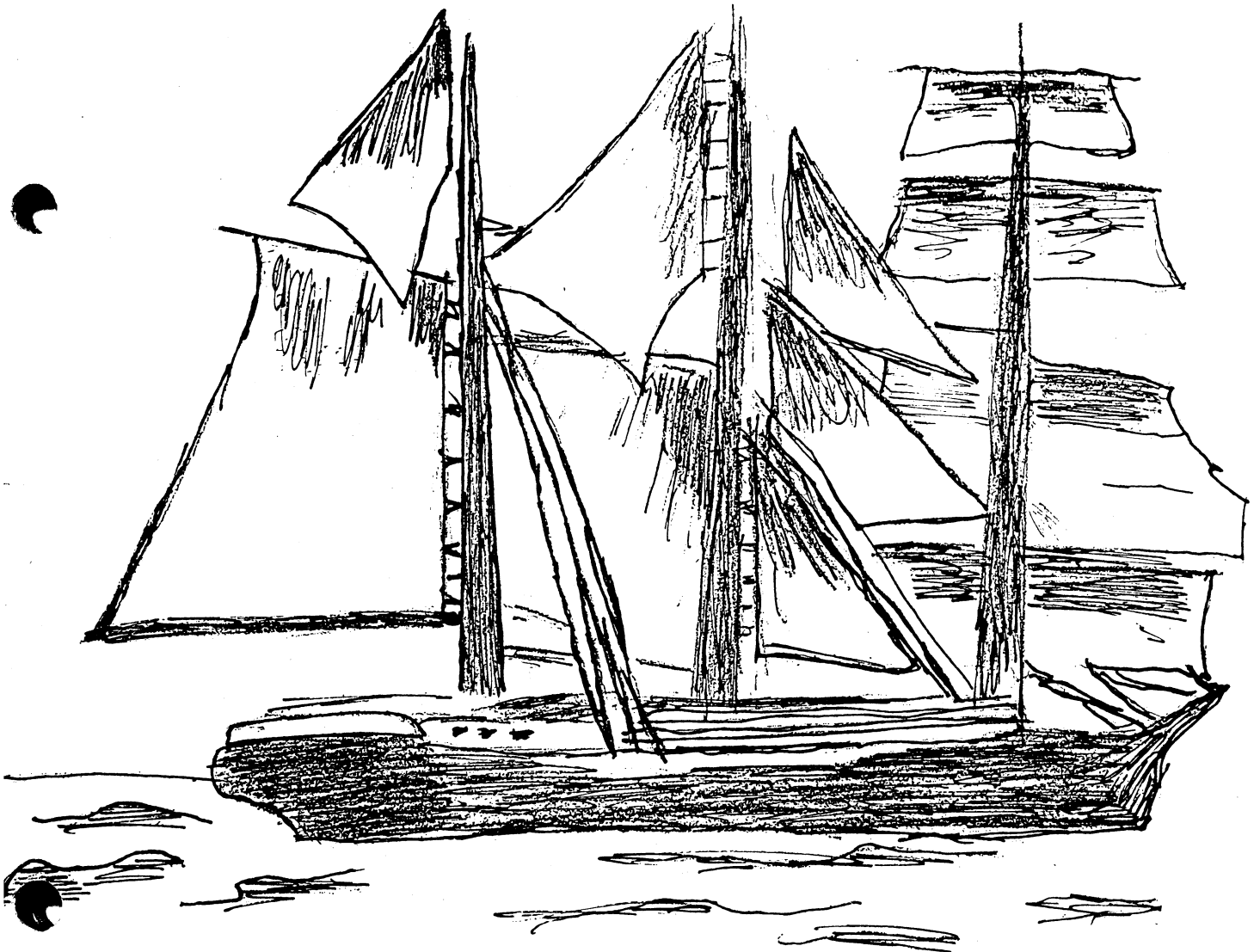
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# TEXAS REGISTER

Volume 21 Number 87 November 22, 1996

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

***Artist: Nick Davis***

***5th grade***

***Copeland Intermediate, Huffman ISD***

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*Texas Register*, ISSN 0362-4781, is published twice weekly 100 times a year except February 23, March 15, August 2, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$95, six month \$75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at \$7 per copy in printed or electronic format.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodical Postage is paid at Austin, Texas.

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

**TEXAS  
REGISTER**

a section of the  
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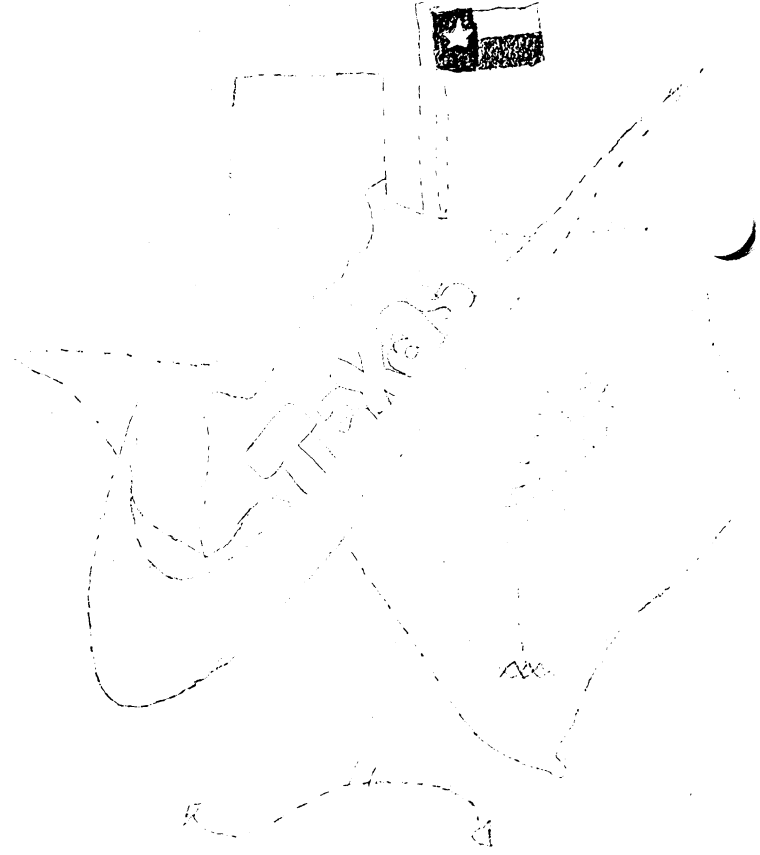
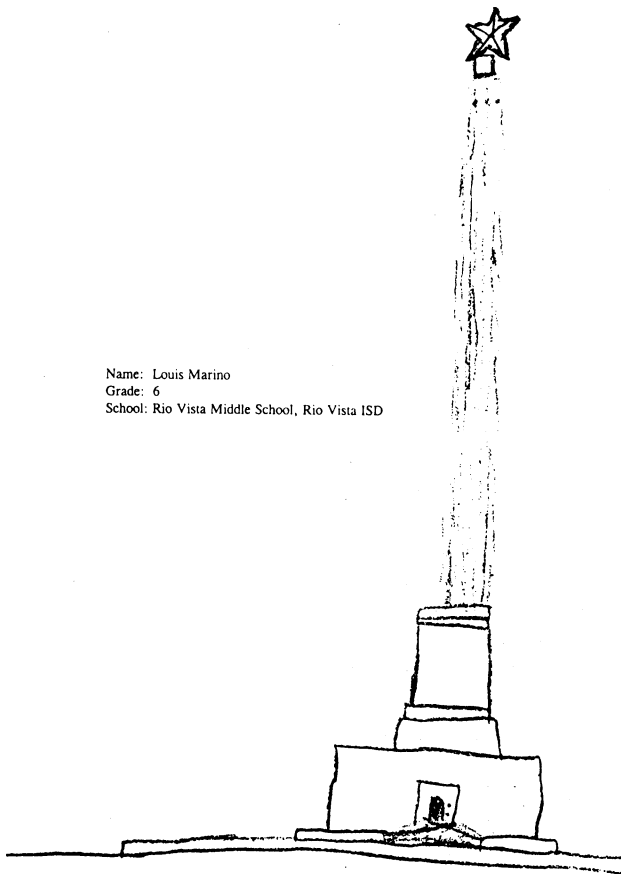
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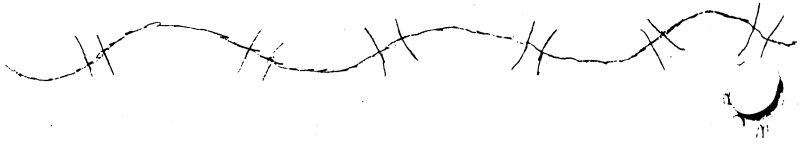
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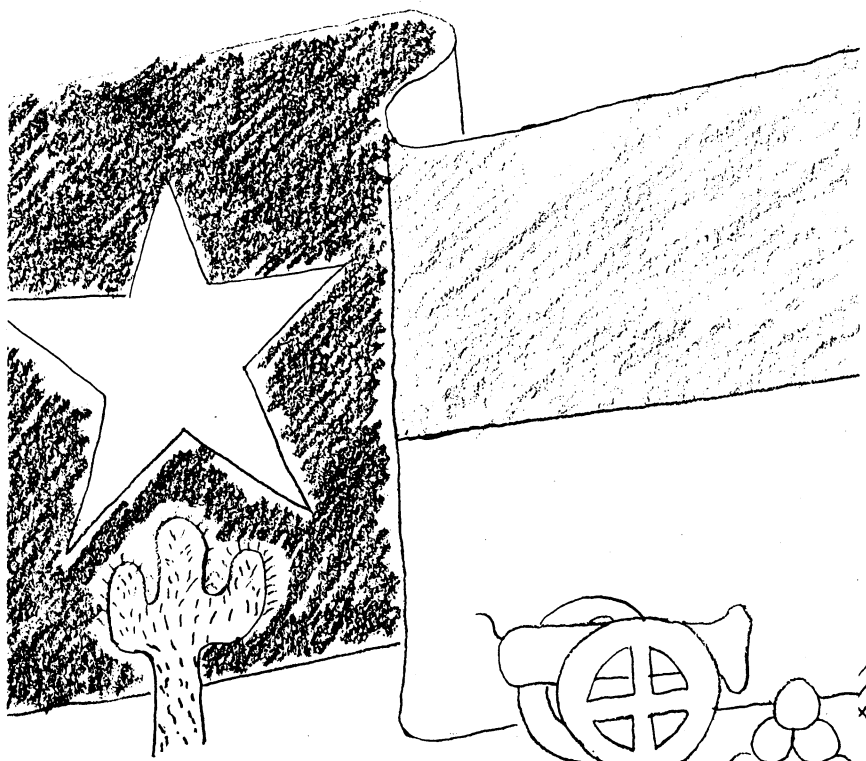
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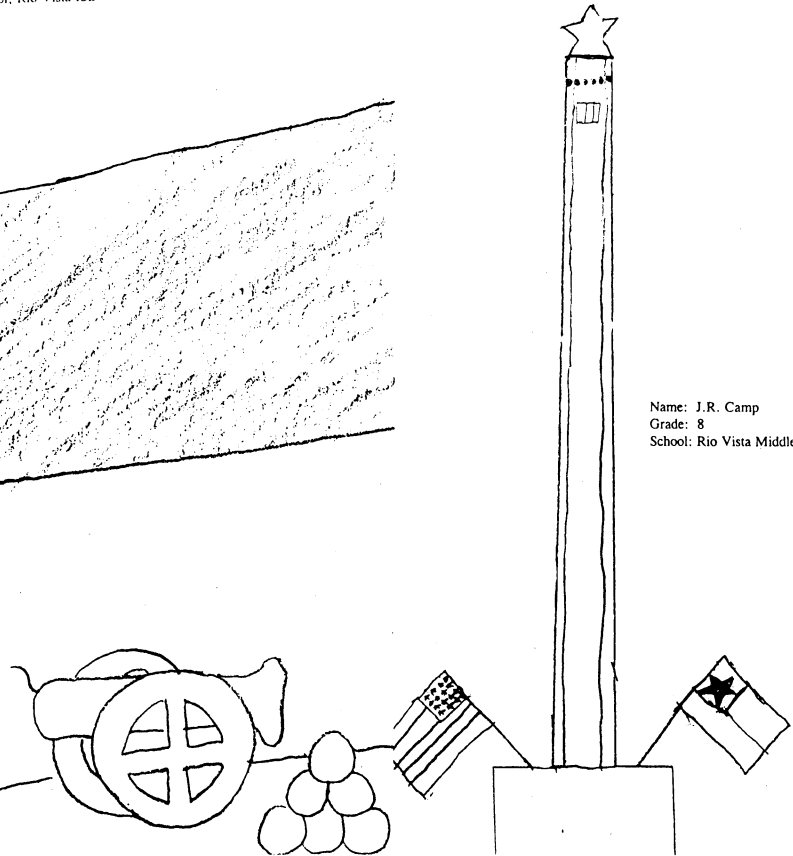
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# TEXAS ETHICS COMMISSION

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

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

#### AOR Number 387

The Texas Ethics Commission has been asked about the information required to be included on a campaign finance report under "total principal amount of all outstanding loans as of the last day of the reporting period." The specific question is whether the total reported should include personal funds that the candidate has used for campaign or officeholder purposes and for which the candidate may reimburse himself from political contributions.

#### AOR Number 388

The Texas Ethics Commission has been asked to consider whether §253.162 of the Election Code, which places limits on a judicial candidate's or officeholder's use of political contributions to repay loans to certain relatives, applies to loans made before the effective date of the Judicial Campaign Fairness Act.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the

following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 305, Government Code; (4) Title 15, Election Code; (5) Chapter 36, Penal Code; and (6) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on November 7, 1996.

TRD-9616444

Tom Harrison

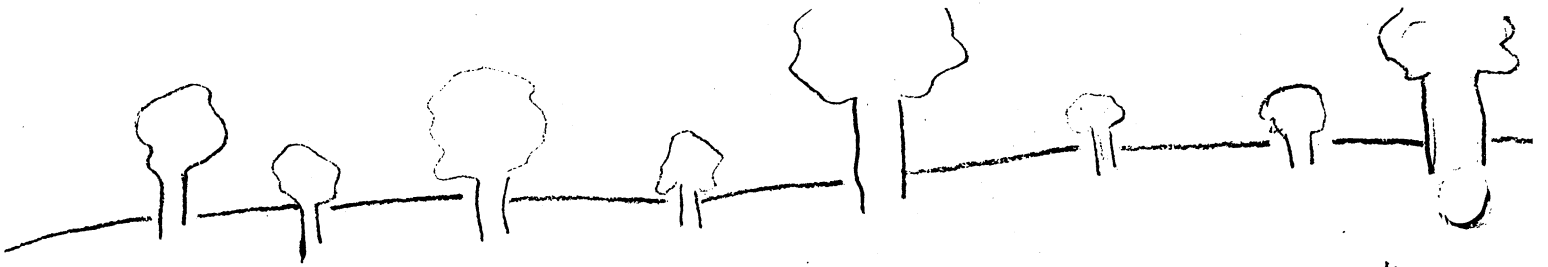
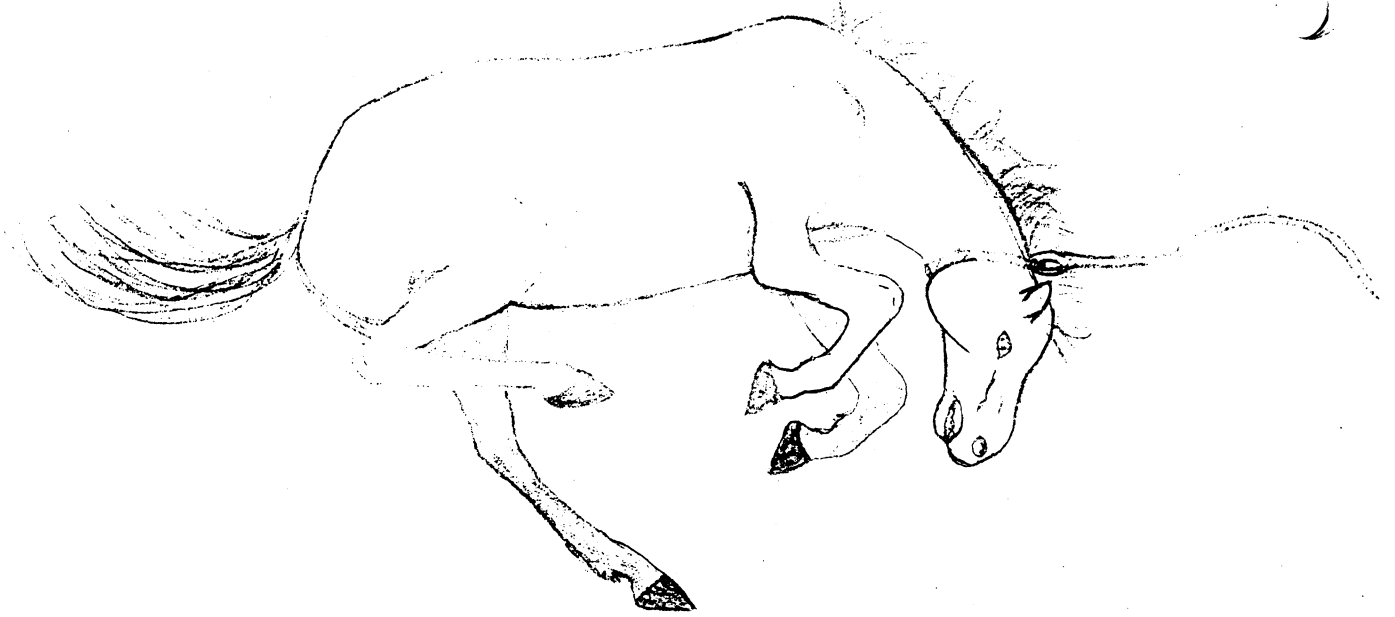
Executive Director

Texas Ethics Commission

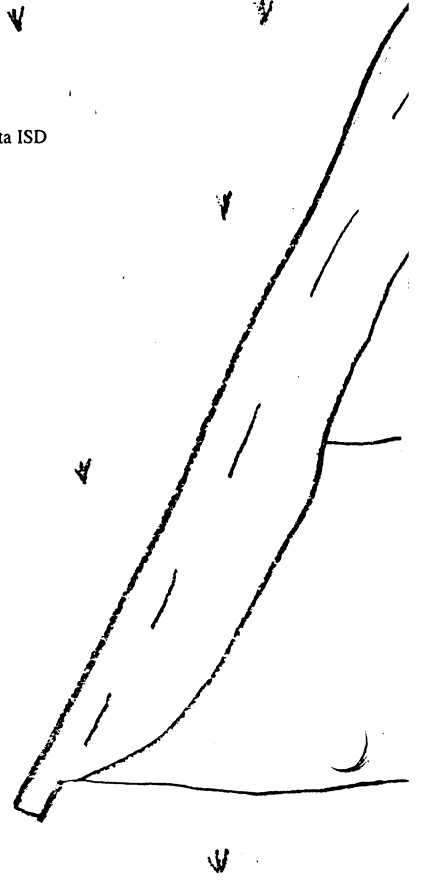
Filed: November 13, 1996



Name: Devin Griffin  
Grade: 8  
School: Rio Vista Middle School, Rio Vista ISD



Name: Mandi Hearne  
Grade: 8  
School: Rio Vista Middle School, Rio Vista ISD



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 75. Automobile Club

The Office of the Secretary of State proposes amendments to §§75.2, 75.11, 75.12, 75.13, 75.31, 75.32, 75.33 and 75.34, concerning the regulation of automobile clubs. These amendments are necessary to conform the Sections to Chapter 72 of the Texas Transportation Code (the "Code"), and to make non-substantive language corrections.

The proposed amendments to §§75.2, 75.11, 75.12, 75.13 & 75.32 revise the statutory references to reflect the proper citations under the Code. In addition, the amendments to §§75.11, 75.12 & 75.13 delete the word, "salesman", to conform with the Code's use of the term "agent".

The amendment to §75.31, concerning the revocation or suspension of an automobile club certificate of authority, reflects that an appeal from a final decision by the Secretary of State is subject to the Administrative Procedure Act ("APA"), and must be filed with a Travis County district court.

Section 75.33 is amended to indicate that the APA specifies the type of notice required before the institution of proceedings to revoke or suspend an automobile club certificate of authority. The amendment to §75.34 indicates that the State Office of Administrative Hearings will set the time and location for hearings held pursuant to the Automobile Club Services Act.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, has determined that for the first five-year period that the proposed amendments are in effect there will be no fiscal implications for state or local government or small business as a result of enforcing the amendments.

Mr. Joyner also has determined that for each year of the first five years that the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to

correct statutory citations, clarify procedures, and conform the rules to Chapter 755 of the Code.

There is no anticipated additional economic cost to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

#### Application for Certificate of Authority

##### 1 TAC §75.2

The amendment is proposed under the Texas Government Code, §2001.004 (1), which provides the Secretary of State with the authority to prescribe and adopt rules.

The amendment affects Chapter 722 of the Texas Transportation Code.

##### §75.2. Annual Renewal Required.

Every certificate of authority to act as an automobile club shall expire annually on August 31[,] of each year unless sooner revoked or suspended. Application for renewal of such certificate of authority shall be filed upon the form[s] prescribed by the secretary of state [entitled automobile club application for certificate of authority renewal]. The annual license fee for renewal of such certificate of authority shall be as prescribed by Texas Transportation Code, §722.007 [Texas Civil Statutes, Article 1528d, § 5]. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of Secretary of State, P.O. Box 12887, Austin, Texas 78711.

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 November 8, 1996.

TRD-9616413

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 23, 1996  
For further information, please call: (512) 463-5570

◆ ◆ ◆  
**Registration of [Salesmen or] Agents**

**1 TAC §§75.11, 75.12, 75.13**

The amendments are proposed under the Texas Government Code, §2001.004 (1), which provides the Secretary of State with the authority to prescribe and adopt rules.

The amendments affect Chapter 722 of the Texas Transportation Code.

*§75.11. Notification of Appointment and Application To Act as an Automobile Club [Salesman or] Agent.*

Within 30 days of the date of employment of an [a salesman or] agent by an automobile club to sell memberships in the automobile club, the automobile club shall notify the secretary of state on the form prescribed by the secretary of state [entitled notification of appointment and application to act as an automobile club salesman or agent]. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

*§75.12. Termination of Employment.*

Upon termination of any[salesman's or] agent's employment by an automobile club, the club [such] shall within 30 days thereafter notify the secretary of state of such termination. Such notification shall be made on the prescribed termination notice form. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

*§75.13. Fee and Renewal.*

The annual registration fee for [salesmen or] agents of automobile clubs shall be as prescribed by Texas Transportation Code, §722.011 [Texas Civil Statutes, Article 1528d, §6], and the registration shall be renewed each 12 months after its issuance. The renewal shall be made on a form prescribed by the Secretary of State [the form entitled annual renewal of a registered salesman or agent]. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of Secretary of State, P.O. Box 12887, Austin, Texas 78711.

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 November 8, 1996.

TRD-9616414

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 463-5570

◆ ◆ ◆  
**Revocation and Suspension of Certificate**

**1 TAC §§75.31, 75.33, 75.34**

The amendments are proposed under the Texas Government Code, §2001.004 (1), which provides the Secretary of State with the authority to prescribe and adopt rules.

The amendments affect Chapter 722 of the Texas Transportation Code.

*§75.31. Revocation of Certificate of Authority.*

The secretary of state at any time for good cause shown, in accordance with the Administrative Procedure [and Texas Register] Act and the rules of practice and procedure before the Office of the Secretary of State, may revoke or suspend an automobile club's certificate of authority. Revocation and suspension will be subject to the right of notice, hearing, and adjudication pursuant to the automobile club rules, the Administrative Procedure [and Texas Register] Act, [and] the rules of practice and procedure before the Office of the Secretary of State, and the rules of procedure for the State Office of Administrative Hearings. Such action will be subject to the right of appeal to a Travis County district court [in the county of the aggrieved person's residence within 60 days after the date of notice by registered mail of such decision, but not thereafter].

*§75.33. Notice.*

No revocation or suspension is effective unless prior to the institution of proceedings, the secretary of state gives notice pursuant to the Administrative Procedure Act [a minimum of 21 days notice by registered or certified mail to the automobile club].

*§75.34. Hearing.*

All administrative hearings will be held in Austin. The State Office of Administrative Hearings [secretary of state] will set the time and hearing room location [in the notice as prescribed in §75.33 of this title (relating to Notice) and in accordance with the rules of practice and procedure before the Office of the Secretary of State].

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

Issued in Austin, Texas, on November 8, 1996.

TRD-9616415

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 463-5570

◆ ◆ ◆  
**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

**Chapter 9. Liquefied Petroleum Gas Division**

**Subchapter B. Basic Rules**

The Railroad Commission of Texas proposes the simultaneous repeal and proposal of new §9.183, relating to uniform protection standards. The current §9.183 describes the protection required for LP-gas transfer systems and storage containers, including fencing, guardrails, signs and lettering, and storage specifications. The simultaneous repeal and proposal of a new rule will allow some nonsubstantive reorganization of the rule

to provide better clarity and a more logical structure. The substantive changes to the proposed new rule are in subsections (c)(2) and (l)(2)(A) and (B), in which the wording "capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost" is added to standardize the guardrail requirements throughout the section and to allow alternative forms of protection other than capping; in subsections (i), (l), (m) and (n), in which the wording "or forklift" is added to clarify which requirements also apply to forklift containers; in subsection (j), in which the wording "or otherwise secured" is added to allow methods of attachment equal to tack welding; and in subsection (o)(2), in which the reference to "water capacity" is changed to "LP-gas capacity" to correct a clerical error from an earlier rulemaking regarding this section.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each of the first five years the sections are in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the sections.

Mr. Petru has also determined that the public benefit anticipated as a result of enforcing the sections will be better understanding of the requirements through a better organized, more specific rule. There is no anticipated economic cost to small businesses and to individuals as a result of most of the proposed sections; the additional requirements in subsections (c)(2), (j), and (l)(2)(A) and (B) may in fact reduce costs since they are providing more options without any reduction in safety.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1518. For more information, contact Thomas D. Petru at (512) 463-6949.  
**16 TAC §9.183**

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

Texas Natural Resources Code, §113.051 is affected by this proposed repeal.

*§9.183. Uniform Protection Standards.*

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 November 13, 1996.

TRD-9616408

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Earliest possible date of adoption: December 23, 1996

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



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

Texas Natural Resources Code, §113.051 is affected by this proposed new section.

*§9.183. Uniform Protection Standards.*

(a) LP-gas transfer systems and storage containers, excluding automatic dispensers, shall be protected from tampering and damage as specified in this section. DOT portable and forklift containers in storage other than storage racks described in subsection (j) of this section shall be protected in accordance with subsection (b) of this section. Automatic dispensers for general public use shall be protected against collision damage in accordance with §9.1571 of this title (relating to protection of dispensers). New LP-gas containers which have never had LP-gas introduced into them and which have never been in LP-gas service are not required to comply with the fencing and guardrailing requirements in subsections (b) and (c) of this section or the minimum distance requirement in §9.185 of this title (relating to LP-gas storage and installation distance requirements).

(b) Fencing at LP-gas installations shall comply with the following:

(1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size.

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

(3) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material if located within the minimum distances specified for sources of ignition or combustible materials set forth in Tables 1 and 2 of §9.185 of this title (relating to LP-gas storage and installation distance requirements) for the enclosed LP-gas transfer system or LP-gas container.

(4) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be locked whenever the area enclosed is unattended. The width of the gate shall be sufficient to prevent binding of the transfer hoses on the gate posts and to insure breaking of the bulkhead pipe risers or nipples in the event of a pullaway.

(5) Clearance of at least 24 inches shall be maintained between the fencing and the container, material handling equipment, and the entire dispensing system.

(6) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container shall be designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in subsection (c) of this section.

(7) The operating end of a container (including all material handling equipment and the entire dispensing system) shall be completely enclosed by fencing.

(8) ASME containers or manual dispensers originally manufactured as completely self-contained units are exempt from

the requirements of this subsection. Self-contained units shall be protected as specified in subsection (c) of this section.

(9) Containers or manual dispensers not originally manufactured as completely self-contained units shall be protected as specified in the fencing requirements unless written approval is received from the commission prior to installation. The request for approval shall be in writing and shall specify the manner in which the valves, fittings, and other appurtenances will be protected against tampering by unauthorized persons, including specifications for materials to be used. If the commission grants approval, the self-contained unit shall comply with the requirements of subsection (c) of this section.

(c) Guardrails at LP-gas installations shall comply with the following:

(1) Where fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or electric controls for the pumps and compressors or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas.

(2) Vertical supports for guardrails shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The vertical supports shall be capped on the top or otherwise protected to prevent the entrance of water or debris into the guardpost; anchored in concrete at least 18 inches below the ground; and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

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

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

(5) Clearance of at least 24 inches shall be maintained between the railing and any part of an LP-gas transfer system or container. The two posts at the ends of any railing which protects a bulkhead shall be located at 45-degree angles to the corner of the bulkhead.

(6) The operating end of the container (including all material handling equipment and the entire dispensing system) and any part of the LP-gas transfer system or container which is exposed to vehicular traffic shall be protected from damage by the vehicular traffic. The protection shall extend at least 24 inches beyond any part of the LP-gas transfer system or container which is exposed to vehicular traffic.

(d) A combination of fencing and guardrails specified in subsections (b) and (c) of this section shall not result in less protection than using either fencing or guardrails alone.

(e) The requirements in subsection (c) do not apply to the following:

(1) LP-gas systems and containers located at private residences;

(2) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;

(3) LP-gas piping which contains no valves and which complies with the provisions of §9.959 of this title (relating to exterior piping); and

(4) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.

(f) The commission may require an installation to be protected in accordance with subsections (b) and (c) of this section where, because of exceptional circumstances, added safeguards are needed to adequately protect the health, safety, and welfare of the general public. If a person owning or operating such an installation disagrees with the commission's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the commission or removed from service with all product withdrawn from it until the commission reaches a final decision.

(g) LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. Figure: 16 TAC 9.183(g)

(1) Unless colors are specified, lettering shall be in a color that sharply contrasts to the background color of the sign, and shall be readily visible to the public.

(2) The first three requirements in Table 1 may be combined on one sign.

(3) The first three requirements in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by guardrailing as required in subsection (c) of this section, and bulkheads as required by §9.187 of this title (relating to LP-gas storage bulkhead protection) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) The last item in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(5) An asterisk indicates that the requirement applies to the equipment or location listed in that column.

(h) Stationary ASME containers and DOT portable containers shall be installed in accordance with the distance requirements in Table 1 of §9.185 of this title (relating to LP-gas storage and installation distance requirements).

(i) DOT portable or forklift containers awaiting use or resale shall be stored in accordance with the distance requirements specified in Table 2 of §9.185 of this title (relating to LP-gas storage and installation distance requirements).



(j) A storage rack may be used to store 20-pound DOT portable or any size forklift containers. Welding or carriage bolts at least 3/8 inch in size shall be used to construct the storage rack provided that the heads of the carriage bolts are to the outside of the rack and that the nuts are tack-welded or otherwise secured against displacement on the inside of the rack. The storage rack shall also meet the Occupational Safety and Health Administration (OSHA) standards. The rack shall be constructed of at least:

- (1) 18 gauge perimeter members with 13 gauge expanded steel panels providing for ventilation and protection from tampering;
- (2) 18 gauge steel roof; and
- (3) padlock loop (welded on).

(k) Storage racks with solid steel backs constructed of at least 18 gauge steel may be located against a combustible wall provided the containers stored on the rack do not exceed the maximum aggregate water capacity allowed per rack.

(l) Storage racks used to store 20-pound DOT portable or any size forklift containers that are not installed against the wall of a building shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (c) of this section; or

(2) installing guardposts, provided that:

(A) the guardposts are at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost, and anchored in concrete at least 30 inches below ground and rising at least 30 inches above the ground; or

(B) if the guardposts cannot be anchored in concrete at least 30 inches below ground, they are constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost, and attached by welding to an eight-inch by eight-inch steel plate at least 1/2 inch thick. The guardposts and steel plate shall be permanently installed.

(m) Service valves on DOT portable or forklift containers that are in storage shall be in the closed position at all times.

(n) DOT portable or forklift containers in storage, except those in storage racks or at single family dwellings used as private residences, shall meet the fencing requirements of subsection (b) of this section. This does not apply to DOT portable or forklift containers that have been used in LP-gas service but are not awaiting use or resale.

(o) DOT portable containers may be used but not stored inside a building when required as fuel supply containers for approved torches used in the construction, repair, or improvement of the building or structure, its fixtures and equipment, or for other industrial uses. Such installation shall comply with the following additional requirements:

(1) Regulators shall be connected directly to container valves.

(2) Containers shall not have an aggregate or individual LP-gas capacity exceeding 250 pounds; and

(3) Such containers while being used in a building shall be protected from excessive rises in temperature, damage, or tampering.

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 November 13, 1996.

TRD-9616409

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Earliest possible date of adoption: December 23, 1996

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

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**16 TAC §9.184**

The Railroad Commission of Texas proposes an amendment to §9.184, relating to uniform safety requirements. Section 9.184 describes safety requirements for installations, including general equipment and procedures, valves, and pumps. The commission proposes to clarify subsections (a)(11) and (b)(2), and to add new subsection (a)(13).

Specifically, the proposed amendments in (a)(11) clarify requirements for installations with vapor return hoses. Proposed new subsection (a)(13) specifies when and what types of containers may be stacked during storage; current subsection (a)(13) through (18) are renumbered, and references to a subchapter and rule number in current (a)(13) are corrected.

Proposed amendments to (b)(2) clarify requirements for hydrostatic relief valves and specify the different requirements for stationary installations and transports; the proposed amendments correspond to U.S. Department of Transportation requirements, and the clarification eliminates an overly restrictive requirement for transports by expanding the range for the hydrostatic relief valve pressure setting.

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

Mr. Petru has also determined that for each year of the first five years the sections as proposed will be in effect the public benefit anticipated as a result of enforcing the sections as proposed will be standardized requirements for these types of installations, resulting in an increase in safety for the general public.

There may be some anticipated economic costs to individuals or small business required to comply with the proposed amendments. The clarification of the hydrostatic relief valve requirement in subsection (b)(2) does not add any cost, but may in fact reduce costs for transports which no longer have to comply with an overly burdensome requirement.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket No. 1526. For more information, contact Thomas D. Petru at (512) 463-6949.

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

Texas Natural Resources Code, §113.051 is affected by this proposed amendment.

§9.184. *Uniform Safety Requirements.*

(a) General.

(1)-(10) (No change.)

(11) Pull-away device. Each LP-gas private or public motor/mobile or forklift refueling installation which includes a liquid dispensing system shall incorporate into that dispensing system a pull-away device. Any vapor return hose installed at such installations shall also be equipped with a pull-away device. This subsection does [This requirement is] not apply [applicable] to the LP-gas transport transfer operation at a bulk storage installation.

(12) Mounting and support [Support] of aboveground containers. All LP-gas storage containers, except skid containers, shall be provided with substantial masonry or noncombustible structural supports on a firm masonry foundation so that the bottom of the container is not in contact with the ground. The use of tile or hollow brick is not permitted.

(A) - (B) (No change.)

(13) Stacking of containers. New and unfilled containers may be stacked for storage. Any container which has contained any amount of LP-gas, liquid or vapor, may not be stacked upon each other unless the manufacturer has designed the container for that type of installation. Storage of DOT portable or forklift containers in an approved storage rack is not prohibited.

(14) [(13)] Painting of containers. All ASME containers, except vaporizer and motor/mobile fuel containers installed in accordance with Subchapter I [G] of this chapter (relating to LP-Gas Motor Fuel and Mobile Fuel Containers [Division V]), shall be painted white or aluminum. LP-gas transports shall be painted in accordance with §9.1764 [§9.512] of this title (relating to Painting).

(15) [(14)] Lettering, marking, and numbering of containers. All containers shall be lettered, marked, or numbered in accordance with the requirements set forth in Table 1 of §9.183 of this title (relating to Uniform Protection Standards).

(16) [(15)] Covering LP-gas containers. No canopies or coverings are allowed over any LP-gas container or over loading and unloading areas where LP-gas transport transfer operations are performed. Non-combustible wind breaks and other weather protection may be installed to provide employees and customers protection against the elements of weather, but shall not be installed over any portion of an LP-gas container.

(17) [(16)] Underground containers. A container designed for underground installation only shall not contain liquid fuel at any time the container is aboveground or uncovered.

(18) [(17)] Identification of installations. Upon completing the installation of an LP-gas container, except those used for bulk storage or retail DOT container filling/service station installations, the licensee making the installation shall attach to the container a decal

or tag of metal or other permanent material indicating the following information:

- (A) the licensee's name;
- (B) the LP-gas license number; and
- (C) the year the container was installed.

(19) [(18)] A single identification decal or tag may be used to satisfy the requirements in §§9.231, 9.462, 9.771, and 9.952 of this title (relating to Identification of Approved Appliances, Containers Manufactured for Underground Installation, Vehicle Identification Labels, and Piping Installation Identification, respectively) provided the decal or tag meets all the requirements of those sections.

(b) Valves.

(1) (No change.)

(2) Hydrostatic relief valve. Any closed portion of liquid piping or hose designed to operate up to 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting between [of not less than] 400 and [psig or more than] 500 psig for stationary installations, and between 375 and 500 psig for transports, or a bypass valve installed according to the manufacturer's instructions. Liquid piping or hose designed to operate above 350 psig shall be equipped with a hydrostatic relief valve having a pressure setting of between [not less than] 110% and [or more than] 125% of the system design pressure, or a bypass valve installed according to the manufacturer's instructions. Hydrostatic relief valve discharge shall be directed or vented so that any gas released will not directly impinge upon containers, any part of a vehicle, adjacent persons or vehicles or the inside of the passenger or luggage compartment of a vehicle.

(3)-(12) (No change.)

(c) (No change.)

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

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

TRD-9616410

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Earliest possible date of adoption: December 23, 1996

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

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Part II. Public Utility Commission of  
Texas

Chapter 23. Substantive Rules

Customer Service and Protection

16 TAC §23.49

The Public Utility Commission of Texas proposes an amendment to §23.49, concerning customer service and protection. The proposed amendment changes the manner in which the

Commission will review a LEC's request for exemption from the requirements of the subsection under §23.49(c)(4).

Jackie Follis, Senior Policy Analyst in the Legal Division of the Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission looks to the facts or circumstances existing on the date an ELC petition is filed rather than the date that the exemption request is filed in determining whether an exemption request should be granted. There will be no effect on small businesses as result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical area affected by implementing the requirements of the section.

Comments on the proposed amendment (16 copies) may be submitted to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 1701 North Congress, 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. Additionally, the commission invites specific comments regarding how the passage of Senate Bill 652 (Federal Telecommunications Act of 1996) impacts this rule. All comments should refer to Project Number 16390. The commission staff will conduct a public hearing on this rulemaking under Texas Government Code, §2001.029 at the commission offices on November 21, 1996 at 10:00 a.m.

The amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, §3.304, which authorizes the commission to approve rules relating to expanded toll-free calling areas.

Cross Index to Statutes: PURA §1.101, §3.304.

§23.49. *Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Areas.*

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

(c) Expanded local calling service.

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

(4) Request for exemption.

(A) An incumbent LEC serving either the petitioning or petitioned exchange may file a request for exemption from the provisions of this subsection. Such requests must be filed no later than 20 days after the filing of the petition. The request for

exemption shall be accompanied by an affidavit identifying with particularity which of the conditions described in this subparagraph exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. The commission shall look to the facts or circumstances existing on the date the ELC petition is filed in determining whether a request for exemption may be granted. Exemptions shall be granted and the petition shall be dismissed by the presiding officer, in the manner described in subparagraphs (B) and (C) of this paragraph, if:

(i)-(v) (No change.)

(B)-(D) (No change.)

(5)-(12) (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 November 12, 1996.

TRD-9616371

Paula Mueller

Secretary of the Commission

Public Utility Commission

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 936-7162

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#### 16 TAC §23.57

The Public Utility Commission of Texas proposes an amendment to §23.57, relating to Telecommunications Privacy. The proposal will amend subsection (g) of the rule, relating to Caller ID services, by clarifying that a provider of Caller ID services may offer and provide per-line blocking to its customers without waiting for the customer to send a "compelling need statement" to the commission.

Jackie Follis, Senior Policy Analyst in the Legal Division of the Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that commission rules will be clear regarding the manner in which a provider of Caller ID services may offer and provide per-line blocking to its customers. There will be no effect on small businesses as result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical area affected by implementing the requirements of the section.

Comments on the proposed amendment (16 copies) may be submitted to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711-3326, within 30 days, and reply comments

within 15 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. Additionally, the commission invites specific comments regarding how the passage of Senate Bill 652 (Federal Telecommunications Act of 1996) impacts this rule. All comments should refer to Project Number 16404. The commission staff will conduct a public hearing on this rulemaking under Texas Government Code, §2001.029 at the commission offices on November 19, 1996 at 10:00 a.m.

The amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and §3.302, relating to Caller Identification Services.

Cross Index to Statutes: PURA §1.101, §3.302.

§23.57. *Telecommunications Privacy.*

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

(g) Caller Identification Services ("Caller ID").

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

(3) Caller ID blocking.

(A) Per-call blocking. All providers of caller ID shall provide per-call blocking at no charge to each telephone subscriber in the specific area in which caller ID is offered.

(B) Per-line blocking.

(i) A provider of caller ID may offer and provide per-line blocking to any customer at any time without any notification to the commission by the customer or the provider. The telecommunications provider is encouraged to notify the customer by mail of the effective date that per-line blocking will be instituted.

(ii) All providers of caller ID shall provide per-line blocking at no charge to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking.

(I) When a customer requests per-line blocking through the commission, the telecommunications provider shall notify the customer by mail of the effective date that per-line blocking will be instituted.

(II) A provider may assess a service order charge relating to administrative costs in an amount approved by the commission to reinstate per-line blocking on a line only if:

(-a-) the customer initially received per-line blocking on the line at no charge under the provisions of this clause;

(-b-) the customer had the utility remove the per-line blocking initially received under the provisions of this clause; and,

(-c-) subsequent to having the utility remove the per-line blocking, received under the provisions of this clause, requested that the per-line blocking be reinstated.

(III) The commission may prescribe and assess fees and assessments from providers of caller ID in an amount sufficient to cover the additional expenses incurred by the commission in implementing the customer certification provisions of this clause.

(IV) Reports, records, and information received under this clause by the commission or by a provider of caller ID are confidential and may be used only for the purposes of administering this subparagraph.

(iii) A provider of caller ID services shall inform all telephone subscribers in the specific area in which caller ID service is offered of how the subscriber can unblock a line equipped with per-line blocking.

[(3) Per-call and per-line blocking options. Unless otherwise ordered by the commission pursuant to the provisions of subsections (b) and (c) of this section, telecommunications providers that provide caller ID service must:

(A) provide all customers with a free per-call blocking option; and

(B) provide all customers with a free per-line blocking option.]

(4) Blocking failures and provider responsibilities. [Customer Notification. When a customer requests per-line blocking through the commission, the telecommunications provider shall notify the customer by mail of the effective date that per-line blocking will be instituted.] When a telecommunications provider providing Caller ID service to a customer originating a call becomes aware of a failure to block the delivery of calling party information from a line equipped with per-line blocking or per-call blocking (and the caller had attempted to block the call), it shall report such failure to the Caller ID Consumer Education Panel, the commission, and the affected customer if that customer did not report the failure. The provider shall report such failure to the commission by contacting the commission liaison to the Panel. A reasonable effort shall be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

(5) (No change.)

(h) (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 November 12, 1996.

TRD-9616370

Paula Mueller

Secretary of the Commission

Public Utility Commission

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 936-7162

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 89. Adaptations for Special Population:

Subchapter AA. Special Education Services  
Clarification of Provisions in Federal Regulations  
and State Law

19 TAC §89.1115

The Texas Education Agency (TEA) proposes new §89.1115, concerning a memorandum of understanding related to students with disabilities living in residential care facilities, which became effective on June 28, 1996. The interagency agreement was entered into by the Texas Education Agency and eight other state agencies at the direction of the Texas Senate Committee on Health and Human Services, 73rd Texas Legislature, 1993. In addition, the interagency agreement provides for: (a) the identification of responsibilities and programs of state agencies that place school-age residents in RCFs, fund these RCF placements, serve these RCF students, and/or regulate these RCFs; (b) the development of policies and procedures for implementing improved interagency coordination with regard to special education to this RCF population, such as increased sharing of information and a required "child find" notice imposed on an RCF as a condition of licensure or regulation; and (c) procedures for resolving disputes that may arise in implementing this agreement.

Felipe Alanis, deputy commissioner for programs and instruction, 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 or small businesses as a result of enforcing or administering the section.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have 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 improve interagency coordination which in turn will improve the delivery of special education to this population of special education students. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under 34 Code of Federal Regulations (CFR), §300.152, which authorizes a state plan to provide for the development and implementation of interagency agreements; 34 CFR, §300.600, which outlines the responsibilities of TEA for all educational programs; and the Texas Education Code, §29.001, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new section implements 34 Code of Federal Regulations, §300.152 and §300.600, and the Texas Education Code, §29.001.

§89.1115. Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Care Facilities.

(a) Introduction.

(1) Purpose of MOU.

(A) As a result of completing investigations and activities directed by the Senate Committee on Health and Human Services, 73rd Texas Legislature, 1993, the parties to this memorandum of understanding (MOU) have recognized the need to strengthen interagency coordination with regard to ensuring that school-age (between birth and 22 years) residents of residential care facilities (RCFs) receive a free appropriate public education, as required under the Individuals with Disabilities Education Act (IDEA), Part B; 20 United States Code (USC), §§1400 et seq. The purpose of this MOU is to address improving interagency coordination with regard to a local education agency's (LEA's) provision of special education services to students with disabilities residing in residential care facilities (RCFs).

(B) Given this purpose, this MOU identifies the following:

(i) responsibilities and programs of state agencies that place school-age residents in RCFs, fund these RCF placements, serve these RCF residents, and/or regulate these RCFs;

(ii) areas where increased, more effective interagency coordination can be accomplished with regard to the provision of special education services;

(iii) procedures and policies for implementing this enhanced level of interagency coordination; and

(iv) procedures for resolving disputes that may arise in implementing this MOU.

(C) The provisions of this MOU will be implemented in a manner consistent with all state and federal laws, and based on existing resources.

(2) Parties to MOU.

(A) The following parties are participating in this MOU because they place school-age individuals in RCFs, fund these RCF placements, serve these RCF residents, and/or regulate these RCFs.

(i) Texas Education Agency (TEA);

(ii) Texas Department of Human Services (TDHS);

(iii) Texas Department of Mental Health and Mental Retardation (TDMHMR);

(iv) Texas Department of Health (TDH);

(v) Texas Department of Protective and Regulatory Services (TDPRS);

(vi) Texas Interagency Council on Early Childhood Intervention (ECI);

(vii) Texas Commission on Alcohol and Drug Abuse (TCADA);

(viii) Texas Juvenile Probation Commission (TJPC); and

(ix) Texas Youth Commission (TYC).

(B) The state agencies specified in subparagraph (A) of this paragraph will be collectively referred to as "parties." Health and human services agencies shall refer to all the parties except TEA.

(3) Relationship to other memoranda of understanding. The following memoranda of understanding have been previously executed and address some of the school-age residents of residential care facilities.

(A) Memorandum of Understanding Defining Responsibilities to Children Who Are Medically Fragile, executed on October 27, 1994, by TEA, Texas Commission for the Blind (TCB), TDH, TDHS, TDMHMR, TDPRS, and ECI.

(B) Memorandum of Understanding Relating to School-Age Residents of Intermediate Care Facilities for the Mentally Retarded, executed in 1992 between TEA and TDHS, 19 Texas Administrative Code (TAC) §89.1105.

(4) Definitions.

(A) Residential care facilities are facilities which provide 24-hour care to more than six students between the ages of birth and 22 years who have been placed for non-educational reasons. These facilities include:

- (i) child care facilities or institutions;
- (ii) foster group homes;
- (iii) therapeutic foster group homes;
- (iv) habilitative foster group homes or agency group homes regulated by TDPRS;
- (v) intermediate care facilities for the mentally retarded (ICFs-MR);
- (vi) psychiatric treatment centers;
- (vii) therapeutic camps or ranches;
- (viii) residential treatment centers; and
- (ix) nursing or convalescent homes.

(B) Students with disabilities are school-age (i.e., between the ages of birth and 22) individuals with "mental retardation; hearing impairments, including deafness; speech or language impairments; visual impairments (including blindness); serious emotional disturbance; orthopedic impairments; autism; traumatic brain injury; other health impairments; or specific learning disabilities; and who, by reason thereof, need special education and related services," pursuant to IDEA, 20 USC, §1401(a)(1)(A).

(b) Parties' responsibilities to students with disabilities residing in residential care facilities (RCFs).

(1) Texas Education Agency.

(A) The Texas Education Agency (TEA) is the state education agency (SEA). As an SEA, TEA is responsible for ensuring that a Free Appropriate Public Education (FAPE) is provided to all students with disabilities residing in the State of Texas and that all requirements of IDEA, Part B, are met, pursuant to 34 CFR, §300.600. A FAPE means special education and related services that are provided at public expense under public supervision; meet the state standards which include the requirements of IDEA, Part B; include preschool, elementary, and secondary school education;

and are provided in conformity with an individual education plan, pursuant to 20 USC, §1401(a)(18).

(B) In most cases, local education agencies (LEAs), primarily independent school districts in Texas, have the direct responsibility of providing FAPE to students with disabilities whom the LEAs are obligated to serve under Texas Education Code, §25.001. The TEA is responsible for ensuring that LEAs comply with all state and federal requirements concerning the provision of FAPE.

(C) Within this general responsibility to assure FAPE, TEA specifically assures that each child with a disability, regardless of severity, residing within an LEA's jurisdiction will be identified, located, and evaluated in accordance with IDEA and its implementing regulations. To meet this responsibility, TEA requires LEAs to establish policies and procedures to identify, locate, and evaluate students with disabilities residing within their jurisdictions. Activities done pursuant to these policies and procedures are commonly referred to as "child find" activities because LEAs actively search for students with disabilities residing within their jurisdictions, often in coordination with regional education service centers and state agencies. These "child find" activities include searching for students with disabilities residing in RCFs.

(D) Before any student is placed in special education, a full and individualized evaluation is completed to determine eligibility and the nature of the disability.

(E) The local admission, review, and dismissal (ARD) committees are responsible for developing the individual educational plans (IEPs) of students with disabilities after considering the results of the evaluation. The TEA does not have the general authority to review or modify in any way the individual decisions of ARD committees made after following federal and state special education procedures. Parents, however, have procedural safeguards available to challenge decisions of ARD committees which include requesting due process hearings under 19 TAC Chapter 89, Subchapter AA, §§89.1151-89.1190, and filing complaints with the office responsible for special education complaints at TEA. Additionally, TEA has a regular monitoring system for reviewing LEA compliance with federal and state special education requirements.

(F) The TEA also specifically assures that each LEA in Texas will provide FAPE to students with disabilities in the least restrictive environment. When deciding what is the least restrictive environment for a student in an RCF, the ARD committee must base its decision on the individual needs of the student, not what is the most convenient arrangement for the school district or the RCF.

(G) The LEAs are responsible for implementing the IEP. The IEPs typically contain specified instructional and related services. Related services are intended to support the provision of special education services and are only provided when they are necessary for the student to benefit from special education instruction.

(H) Although TEA and LEAs are responsible for ensuring that all students with disabilities residing in Texas receive FAPE, this responsibility under IDEA and its implementing regulations does not:

(i) limit the responsibility of state agencies other than educational agencies for providing or paying for some or all of the costs of educating these students if obligated under another

federal or state statutory or regulatory authority, pursuant to 34 CFR, §300.600(c); and

(ii) permit a state to reduce medical and other assistance available to children with disabilities, or alter the eligibility of a child with a disability under Title V (Maternal and Child Health) or Title XIX (Medicaid) to receive services that are also part of FAPE, pursuant to 34 CFR, §300.601.

(2) Texas Interagency Council on Early Childhood Intervention.

(A) The Texas Interagency Council on Early Childhood Intervention (ECI) is the lead agency under the Human Resources Code, Chapter 73, and the Individuals with Disabilities Education Act (IDEA), Part H, for early childhood intervention efforts for infants and toddlers with developmental delays or the potential for developmental delays between the ages of birth and three years. The ECI is governed by an interagency council composed of representatives from six health and human service agencies which provide some of the services needed by infants and toddlers who have developmental delays or the potential for developmental delays, and their parents, and three public members who are parents of children who have developmental delays. The council is responsible for the planning and implementation of a service system which benefits families with young children who are eligible for services under the Human Resources Code, Chapter 73, and IDEA, Part H.

(B) These services include providing assistance in dealing with variations in normal child development in one or more of the following areas:

- (i) cognitive development;
- (ii) physical development, including hearing and vision;
- (iii) motor skills;
- (iv) nutritional status;
- (v) communications development;
- (vi) social and emotional development; and
- (vii) adaptive development and self-help skills.

(C) When infants and toddlers between birth and age three with developmental delays or the potential for developmental delays are discovered through the child find process in RCFs, they will be referred to LEAs by the RCFs and to an ECI-funded program by the LEAs for appropriate services. These services will be provided pursuant to the Human Resources Code, Chapter 73; IDEA, Part H; and existing MOUs between ECI and TEA.

(3) Texas Department of Human Services. The Texas Department of Human Services (TDHS) is responsible for the licensing, under the Texas Health and Safety Code, Chapter 242, and Medicaid certification, as the designated state survey agency, of the following long-term care facilities, which may include children as residents:

(A) Nursing facilities. Nursing facilities primarily provide skilled nursing care and related services, as well as rehabilitation services, to injured, disabled, or sick persons who reside in the facility.

(B) Intermediate care facilities for the mentally retarded (ICFs/MR). Intermediate care facilities for the mentally retarded provide institutional care and treatment for persons with mental retardation and persons with related conditions. These facilities range in size from small group homes to large state schools.

(4) Texas Department of Mental Health Mental Retardation.

(A) The Texas Department of Mental Health Mental Retardation (TDMHMR) is the state mental health and mental retardation authority and, as such, oversees the following residential programs that are six beds or greater and may serve students with disabilities as defined in this MOU.

(i) The intermediate care facilities/mental retardation or related conditions (ICF- MR/RC) Medicaid program provides residential and habilitation services to persons with mental retardation and to persons with a related condition. The TDMHMR is the operating agency for the ICF-MR/RC program, and the Health and Human Services Commission is the single state Medicaid agency. Providers who participate in this program have a contract with TDMHMR to deliver services under Title XIX of the Social Security Act (the Medicaid program).

(ii) The TDMHMR adopts rules and standards to ensure proper care and treatment of patients in private mental hospitals and mental health facilities required to obtain a license under the Texas Health and Safety Code, Chapter 577. All other licensing responsibilities for these facilities are performed by the Texas Department of Health.

(iii) The TDMHMR designates local mental health and mental retardation authorities in local service areas. A community mental health or mental retardation center, established under the Texas Health and Safety Code, Chapter 534, can be designated as a local mental health or mental retardation authority. The community center may own and operate residential services for students with disabilities, as defined in this MOU.

(B) The TDMHMR is authorized by law to provide mental health and mental retardation residential services to students with disabilities, as defined in the MOU, in state-operated facilities and community programs pursuant to the Texas Health and Safety Code, §§531.001 et seq.

(5) Texas Department of Health. The Texas Department of Health (TDH) is responsible for the following programs that may provide services to school-age residents of RCFs.

(A) Child health services. This program provides comprehensive health evaluations for infants, children, and adolescents, including health education, with emphasis on injury prevention, age-appropriate dietary patterns, normal child development, and parenting skills. Services are provided by agency employees, contracts with local government providers, and contracts with private sector providers. The TDH is authorized to provide these services under Title V of the Social Security Act and the Maternal and Infant Health Improvement Act, the Health and Safety Code, Chapter 32.

(B) Texas medical assistance program (Medicaid) which includes the early and periodic screening, diagnosis, and treatment program (EPSDT). The EPSDT program provides comprehensive health care services that include preventive periodic screening, diagnosis, and treatment of medical and dental health problems to



children eligible for Medicaid. Services are provided through fee-for-service billing by local government providers and private sector providers. The TDH is authorized to provide these services under the Social Security Act §§1902(a)(4)(B) and 1905(r).

(C) Medically dependent children program (MDCP). The MDCP provides in-home and out-of-home licensed nursing, facility-based respite care, and regular Medicaid state plan benefits. Services are provided through contracts with private sector providers. The TDH is authorized to provide these services under the Social Security Act, §19115(c).

(D) Children with special health care needs program (Chronically ill and disabled children's services (CIDC)). The CIDC provides case management, medical care, and related services for children with certain chronic illnesses or conditions. Services are provided by agency employees, through contracts with private sector providers and fee-for-service billing by private sector providers. The TDH is authorized to provide these services under Title V of the Social Security Act and the Chronically Ill and Disabled Children's Act, Chapter 35 of the Health and Safety Code.

(E) Vision and hearing screening program. This program provides training and certification for vision and hearing screeners to prevent eye injuries and preserve hearing. The services are provided by agency employees and through contract with private sector providers. The TDH is authorized to provide these services under the Special Senses and Communications Disorders Act, Chapter 36 of the Health and Safety Code.

(F) School health program. The school health program provides start-up funding for model school health centers to provide health, social, and mental health services for children and adolescents. Services are provided through grants to local government providers.

(G) Speech language screening program. The speech language screening program provides training and certification for speech/language screeners in identifying and referring children with communication delay. Services are provided by agency employees and through contracts with private sector providers. The TDH is authorized to provide these services under the Special Senses and Communication Disorders Act, under the Health and Safety Code, Chapter 36.

(H) Childhood lead prevention program. This program provides tracking and technical support for the professionals caring for children with positive EPSDT blood screening for lead. Services are provided by agency staff. The TDH is authorized to provide these services under the Social Security Act, §1905(r).

(I) Newborn screening program. This program provides testing at birth and two weeks of age for all children for five rare disorders to ensure early diagnosis and treatment. Services are provided by agency staff. The TDH is authorized to provide these services under the Phenylketonuria, Other Heritable Diseases, and Hypothyroidism Act, the Health and Safety Code, Chapter 33.

(J) Program for amplification for children in Texas (PACT). The PACT provides diagnostic evaluation of hearing impairments, hearing aid evaluations and hearing aids, and related hearing aid services. Services are provided through contracts with private sector providers and fee-for-service billing by private sector providers. The TDH is authorized to provide these services under the Special

Senses and Communications Disorders Act, the Health and Safety Code, Chapter 36.

(K) Immunization program. This program provides vaccines for preventable diseases to all public and some private health care providers, tracks the incidence of immunization of preventable diseases, and investigates epidemics. Services are provided by TDH employees, through contracts with local government providers and through agreements with private sector providers. The TDH is authorized to provide these services under federal law by pursuant to 42 USC, 247b, and 42 CFR, 51b, Subparts A and B. The immunization program is authorized in state law under the Health and Safety Code, Chapters 81 and 161, and the Texas Education Code, §38.001.

(L) Spinal screening program. This program provides instructor and screener training and spinal screening to detect abnormal spine curvature in children attending public and private schools. The services are provided by agency employees. The TDH is authorized to provide these services under the Abnormal Spinal Curvature in Children Act, the Health and Safety Code, Chapter 37.

(6) Texas Department of Protective and Regulatory Services.

(A) The Texas Department of Protective and Regulatory Services (TDPRS), through its Child Care Licensing Division, is responsible for licensing the following entities that are RCFs for purposes of this MOU:

(i) foster group homes, including the following, under the authority of the Texas Human Resources Code, Chapter 42:

(I) primary medical care homes;

(II) habilitative homes;

(III) therapeutic homes;

(IV) homes serving children with autistic-like behavior; and

(V) basic care homes; and

(ii) twenty-four hour child care institutions, including the following, under the authority of the Texas Human Resources Code, Chapter 42:

(I) emergency shelters;

(II) residential treatment centers;

(III) institutions serving mentally retarded children;

(IV) institutions providing basic child care;

(V) halfway houses for children; and

(VI) therapeutic camps; and

(iii) maternity homes under the authority of the Texas Health and Safety Code, Chapter 249.

(B) The TDPRS, through its Protective Services to Families and Children (CPS) Division, is responsible for the following programs that provide services to children who may need special education.



(i) Children with disabilities projects are located in the Edinburg and Arlington areas and provide services to children with disabilities who are in the care of CPS or who have been referred to CPS because of being at-risk of child abuse or neglect. The TDPRS is authorized to provide services to these children under the Child Abuse Prevention and Treatment Act, 42 United States Code Annotated (USCA), §§5101-5106h.

(ii) Protective services to families and children program (CPS) provides services to all children, including children with disabilities, who have been or are at risk of being abused, neglected, or abandoned. Services may include investigation of alleged abuse or neglect, assessment, counseling, referrals to appropriate resources, family preservation services, and foster care. The TDPRS is authorized to perform these duties under the Texas Human Resources Code, Chapter 40; the Texas Family Code, Chapters 102, 153, 261-264; and Child Abuse Prevention and Treatment Act, 42 USCA, §§5101-5106h; and Titles IV-B and IV-E of the Social Security Act, 42 USCA, §§620-628 and §§670-679.

(7) Texas Youth Commission.

(A) The Texas Youth Commission (TYC) is the state juvenile correctional agency for youth who are committed to the TYC by local juvenile courts upon the youth's adjudication for delinquent conduct.

(B) The TYC places and funds RCFs through contracts for residential care for certain TYC youth. The TYC also certifies RCFs that take only TYC youth.

(C) The TYC halfway houses and those RCFs that are certified by TYC are required through TYC core standards to provide an educational component.

(D) The RCFs which contract with TYC are responsible for providing the educational component as required by TDPRS licensing standards based on the level of care they provide.

(E) All RCFs rely on LEAs to meet these licensing or core standards as provided in paragraph (1) of this subsection.

(8) Texas Juvenile Probation Commission. The Texas Juvenile Probation Commission (TJPC) is responsible for setting standards of operation and monitoring juvenile detention facilities and post-adjudication facilities. The TJPC also provides some funding to county operated juvenile probation departments, which may be used for placement of juvenile offenders in residential care facilities.

(9) Texas Commission on Alcohol and Drug Abuse. The Texas Commission on Alcohol and Drug Abuse (TCADA) licenses facilities (including residential facilities) that provide chemical dependency treatment for adolescents.

(c) Child find notification to local education agencies (LEAs).

(1) To further the assurances of TEA and LEAs to identify, locate, and evaluate students with disabilities residing in RCFs, the health and human service agencies agree to effectuate the following "child find" notification requirement: within three working days of admitting an individual between the ages of birth and 22 into a RCF for an educationally significant time period, the facility shall notify in writing the admittance of such an individual to the school district in which the RCF is located.

(2) To the extent authorized by existing federal and state laws, the health and human services agencies agree to adopt and implement policies and procedures requiring RCFs covered by this MOU to comply with the notification requirement as specified in subsection (c) of this section. These agencies further agree to have these policies and procedures in effect by September 1, 1996, to the extent possible, but no later than January 1, 1997.

(3) The TEA agrees to assist any of the health and human service agencies in the development and implementation of this "child find" notification requirement. The TEA further agrees to assist RCFs in identifying which school district should be given the "child find" notification specified in subsection (c) of this section.

(d) Sharing of information.

(1) The parties acknowledge that one vital component of interagency coordination with regard to the provision of special education services is the ability to share information between the parties and LEAs. Increasing this sharing should improve efficiency and minimize duplication of efforts. Given this acknowledgment, the parties agree to share all appropriate client and student records to the extent permitted by the applicable confidentiality statutes and regulations. Additionally, the parties agree to develop a "universal" consent form(s) by September 1, 1996, to facilitate this sharing of information.

(2) The parties also acknowledge that LEAs need the following information and/or records in order to determine the appropriate educational services for students with disabilities:

(A) birth certificate or another document as proof of the child's identity;

(B) medical history and medical records, including current immunization records;

(C) social history;

(D) vision and hearing screening and/or evaluation,

(E) assessment reports including psychological, educational, related service, and vocational assessments;

(F) RCF's treatment plan of care,

(G) educational history (at least previous educational placement to facilitate LEA's efforts to obtain educational records from previous LEA); and

(H) any court order which authorizes the placement in the RCF.

(3) Given this acknowledgment, the health and human service agencies agree to adopt and implement, to the extent permitted by existing federal and state laws, policies and procedures requiring RCFs to provide LEAs any of the information specified in paragraph (2) of this subsection and/or records available to the RCF within 14 working days of the school-age resident's admission to the RCF. These agencies further agree to have these policies and procedures in effect by September 1, 1996, to the extent possible, but no later than January 1, 1997.

(4) To the extent permitted by the Family Educational Privacy Rights Act, 20 USC, §1232g, and its implementing regulations, 34 CFR, Part 99, TEA assures that LEAs will provide available educational records requested by RCFs within 14 working days.

(e) Educational space.

(1) The parties acknowledge that all students with disabilities are entitled to be educated in the least restrictive environment (LRE) in accordance with the requirements of IDEA and its implementing regulations. The parties further acknowledge that many RCF placements are made primarily for non-educational reasons, such as for treatment or juvenile justice considerations. Nevertheless, TEA and LEAs must assure that the LRE requirements are met for these placements.

(2) Under IDEA, ARD committees are charged with the responsibility of deciding what is the appropriate educational placement for individual students with disabilities, including school-age residents of RCFs. In making this decision, ARD committees must consider the non-educational needs of these students that restrict the ability of school districts to serve these students on campus in a less restrictive environment. These needs include the student's health and safety needs (e.g., medically fragile), the student's placement in a restrictive RCF program (e.g., juvenile incarceration), and the student's participation in intensive care and treatment (e.g., intensive substance abuse treatment). The ARD committees' decision process must be individualized and not done on a categorical basis, such as the category of the student's disability or residence in a RCF. Further, ARD committees cannot determine educational placement on the basis of what is most convenient to school districts or RCFs.

(3) The TEA assures that, before making these decisions, ARD committees will consider:

(A) the care and treatment plan;

(B) the nature or conditions of the RCF program;

(C) the RCF's preference as to where the student should be educated in light of the student's care and treatment needs and the RCF program; and

(D) the RCF's description of available space should the student need to be educated at the RCF.

(4) The ARD committees are also charged with the responsibility of determining whether space available at the RCF is adequate for the education of individual students for whom the ARD committee is considering educational placement at the RCF. This determination must be based on the individual student's needs and the RCF's description of available space.

(5) If the ARD committee decides that the space described by the RCF is not adequate for the education of the individual student in question or the RCF has no available space, the ARD committee shall find alternative locations for providing educational services. If the LEA disputes the accuracy of the RCF's description of available space, the LEA may use the dispute resolution procedures specified in subsection (h) of this section.

(6) If the RCF subsequently decides to eliminate or reduce space it has previously described to the LEA as being available for one or more individuals, the RCF shall notify the LEA immediately. If the RCF determines that the space it is currently making available to the LEA will no longer be available for one or more individuals or must be reduced, the RCF shall notify the LEA at least 30 days with regard to an individual student or 90 days if the RCF decision impacts more than one student prior to taking any action regarding this space.

(7) The notice requirements specified in paragraph (6) of this subsection are not applicable to those situations where an RCF must interrupt or terminate a school district's use of space due to regulatory actions beyond the RCF's control (e.g., an order to immediately receive additional clients because of an emergency occurring in another RCF).

(8) In those instances where the ARD committee decides that the RCF is the appropriate educational placement consistent with the RCF's preference and the ARD committee determines that the available space described by the RCF is adequate, the RCF is required to:

(A) assure that the space described by the RCF prior to the ARD committee's decision to place the student at the RCF will be provided; and

(B) not charge LEAs any of the costs related to this space which include the costs incurred for the operation and maintenance of this space.

(9) In those instances where the ARD committee decides that the RCF is the appropriate educational placement and the RCF has recommended a preference for not educating the student at the RCF and the ARD committee decides that the available space described by the RCF is adequate, the RCF is required to provide the described space. If the RCF seeks to charge a LEA for this space and these two entities cannot reach an amicable resolution of this matter, the dispute resolution procedures as provided in subsection (h) must be used.

(10) The requirements specified in subsection (e) of this section do not abrogate the responsibility of LEAs to provide the educational and related services set out in the individual educational plan (IEP). Nor do these requirements create a duty on RCFs to construct space if adequate space does not exist in the RCF for educating its residents.

(11) To the extent authorized by existing federal and state law, the health and human service agencies agree to adopt policies and procedures to implement the requirements specified in subsection (e) of this section by September 1, 1996, to the extent possible, but no later than January 1, 1997.

(12) The parties agree to coordinate their regulatory and planning functions with regard to the licensure, certification, and funding of RCF placements involving school-age residents with disabilities to further assure that adequate space will be available for educating those students who cannot be served on a school campus because of their non-educational needs.

(f) Impact of residential care facilities (RCFs) on local education agencies (LEAs).

(1) The parties acknowledge that LEAs are impacted in their ability to provide special education services when a new RCF opens up or expands which serves school-age residents. This impact may be substantial especially in situations where the LEA is small and located in a rural setting.

(2) Given this acknowledgment, the parties agree to develop the following with regard to contracting, licensing, or certifying entities that seek to establish or expand RCFs which serve or plan to serve school-age residents:

(A) State agency coordination. The parties agree to coordinate their regulatory and planning functions and collaborate on assessment, planning, and use of specialists to ensure that education and treatment resources are efficiently and effectively used to appropriately serve students with disabilities in supportive, integrated and least restrictive environments.

(B) Notification to the local education agency (LEA). Any entity requesting to establish a new RCF or expand a RCF that serves or plans to serve school-age residents will be required to provide prior written notice to the affected LEA of their intent to establish or expand a RCF within the LEA's boundaries. This notice must be given within a reasonable time period so that the LEA can plan accordingly. To the extent permissible under current law, the health and human service agencies agree to establish policies and procedures for this notification requirement by September 1, 1996, to the extent possible, but no later than January 1, 1997. The TEA agrees to assist the health and human service agencies in the development and implementation of the policies and procedures.

(g) Parental participation.

(1) The parties acknowledge that parental participation is essential for the determination and the provision of appropriate special education services under IDEA. However, many of the school-age residents placed in RCFs are under the conservatorship of the State of Texas (usually through TDPRS). For these residents, the parties acknowledge the following "surrogate parent" requirements:

(A) The LEAs have the obligation to ensure that a properly trained surrogate parent with no conflicts of interest is appointed for these residents for whom:

- (i) no parent can be identified;
- (ii) the parent cannot be located after reasonable efforts by the LEA to locate; or
- (iii) are wards of the state (e.g., in Texas, the term "conservatorship" is often used to indicate a student is a ward of the state, pursuant to 34 CFR, §300.514(a)).

(B) The LEAs decide as to when and whom to appoint as surrogate parents.

(C) The appointment of a surrogate parent is not restricted to circumstances in which parental rights have been formally terminated by a court. In fact, the requirement to appoint a surrogate parent will be triggered by placing a child under the temporary or permanent conservatorship of the state.

(D) The appointment of a surrogate parent does not necessarily terminate parental rights under IDEA. Unless parental rights have been terminated under the Texas Family Code, parents do not lose their rights to participate in the educational process of their children as the result of the appointment of a surrogate parent.

(E) The obligation to appoint a surrogate parent is not necessarily eliminated when a student turns 18 years old. In some instances, a surrogate parent can be appointed for a student with a disability who is between 18 and 22 years old if needed to assure that this student receives FAPE.

(F) The surrogate parent appointed must have the knowledge and skills to ensure adequate representation of the child and no personal or professional interest which would create a conflict

of interest in his or her representation of the child, pursuant to 34 CFR, §300.514(c).

(G) Pursuant to 34 CFR, §300.514(c), a person assigned as a surrogate parent may not be an employee of a public agency that is involved in the education or care of the child. Thus, public (state, county, or local) employees, like caseworkers or probation officers, would be ineligible to serve as surrogate parents.

(H) Directors and employees of private RCFs generally cannot serve as surrogate parents because of a conflict of interest.

(I) Pursuant to 34 CFR, §300.514(e), surrogate parents may represent the child in all matters relating to:

- (i) the identification, evaluation, and educational placement of the child; and
- (ii) the provision of FAPE to the child.

(2) The TEA assures that in those cases where a surrogate parent is appointed, state caseworkers and the appropriate RCF personnel will be given an opportunity to discuss the student's educational needs with the surrogate parent prior to ARD committee meetings, or at a mutually agreeable time. The TEA further assures that the caseworker representing the state agency having conservatorship of the student and the appropriate RCF representative may participate in the deliberations of the ARD committee, but in no circumstance in place of the required surrogate parent or make the decisions belonging to the surrogate parent.

(h) Dispute resolution.

(1) Intra-agency disputes. Intra-agency disputes concerning the implementation of the MOU shall be resolved in accordance with that agency's established policies and procedures.

(2) Inter-agency disputes.

(A) Disputes concerning implementation of this MOU between either agencies that are parties to the MOU or a local education agency and a party to this MOU, should first be resolved at the local level. The specific issues involved in the dispute and possible solutions shall be identified and referred to the local officials authorized to make the decisions necessary to resolve the dispute.

(B) If local resolution is not possible after a reasonable time period, the inter-agency dispute should be referred to the executive officers of the respective state agencies for further negotiations towards a mutually agreeable resolution. Local agencies submitting to the state agency level shall identify the:

- (i) nature of the dispute;
  - (ii) resolutions agreed upon at the local level;
  - (iii) issues that remain unresolved at the local level;
- and
- (iv) local contact person(s).

(C) The appropriate state officials shall meet to seek resolution of the dispute.

(D) If resolution is not possible at the state level, the executive officers may pursue resolution through the use of mediation or refer the local parties to mediation. As defined in the Texas Civil Practices & Remedies Code, §154.023, "mediation is a forum in which an impartial person, the mediator, facilitates communication between

parties to promote reconciliation, settlement, or understanding among them." The parties should mutually agree on an impartial third party to serve as the mediator, as well as the procedures for conducting the mediation. The mediation shall be non-binding unless the parties agree otherwise.

(i) Contact persons. The following are the contact persons for the respective parties to whom questions or concerns may be directed with regard to this MOU and its implementation.

(1) Texas Education Agency (TEA), director of interagency coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9283.

(2) Texas Department of Human Services (TDHS), assistant deputy commissioner for long term care, 701 West 51st Street, Austin, Texas 78751, (512) 438-3011.

(3) Texas Department of Mental Health and Mental Retardation (TDMHMR), Managed Care Division Children Services, P. O. Box 12668, Austin, Texas 78711, (512) 206-4830.

(4) Texas Department of Health (TDH), director, Children's Health Division, Bureau of Women and Children, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7355, extension 3104.

(5) Texas Department of Protective and Regulatory Services (TDPRS), staff attorney for programs, 701 West 51st Street, Austin, Texas 78751, (512) 438-3803.

(6) Texas Interagency Council on Early Childhood Intervention (ECI), deputy director, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

(7) Texas Commission on Alcohol and Drug Abuse (TCADA), general counsel, 710 Brazos, Austin, Texas 78701, (512) 867-8809.

(8) Texas Juvenile Probation Commission (TJPC), general counsel, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

(9) Texas Youth Commission (TYC), chief of community placement, P.O. Box 4260, Austin, Texas 78751, (512) 483-5093.

(j) Other terms.

(1) This MOU shall be signed by the executive officers of the participating agencies and shall be effective upon signature by all.

(2) This MOU shall be adopted by rule prior to January 1, 1997.

(3) This MOU may be considered for expansion, modification, or amendment upon mutual agreement of the executive officers of the participating agencies.

(4) In the event that federal and/or state laws should be amended, federally interpreted, or judicially interpreted so as to render continued implementation of this MOU unreasonable or impossible, the participating agencies may agree to amend or terminate this MOU.

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 November 13, 1996.

TRD-9616419

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 463-9701

## Part VI. Foundation School Fund Budget Committee

### Chapter 201. Practice and Procedure

#### 19 TAC §§201.1, 201.5, 201.9, 201.13, 201.25

The Foundation School Fund Budget Committee (FSFBC) proposes amendments to §§201.1, 201.5, 201.9, 201.13, and 201.25 concerning the operating rules of the committee. The proposed amendments to the rule reflect the changes made in the recodification of the education code in Senate Bill 1, Seventy-fourth Legislature.

Brian Wilson, Committee Clerk for the FSFBC, has determined that there is no fiscal impact for state or local government.

Mr. Wilson also has determined that the public benefit anticipated as a result of adopting the amendments will be to ensure that the statutory citations are current. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be presented at a public hearing at 9:30 a.m. on November 26, 1996, at Room E1.010 of the Capitol Extension, Austin, Texas, or by writing Mr. Brian Wilson, FSFBC Committee Clerk, Governor's Office of Budget and Planning, P. O. Box 12428, Austin, Texas 78711.

The amendments are proposed under the Foundation School Fund Budget Committee's authority in Texas Education Code §42.256.

No other statutes, articles, or codes are affected by the proposed amendments.

#### §201.1. Purpose.

The purpose of these rules is to provide for an orderly and efficient system of procedure before the Foundation School Fund Budget Committee in order to receive information, reports, testimony, and public comment pertinent to the Foundation School Fund Budget Committee's duties under the Texas Education Code, §42.102 [16.203] and §42.256 [16.256].

#### §201.5. Definitions.

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

CEI-The Cost of Education Index as defined by the Texas Education Code, §42.102 [16.256(e)(2)].

[LEB-The Legislative Education Board. ]

Meeting-A meeting of the committee subject to the Open Meetings Act, Texas Government Code, Chapter 551 [Civil Statutes, Article 6252-17].

#### §201.9. Filing of Documents.

(a) (No change.)

(b) Mandatory filings.

(1) The [LEB]/LBB shall file with the committee all recommendations and all written and oral testimony and reports used or reviewed in their deliberations under the Texas Education Code, §42.007 [16.008 and §16.203].

(2) The committee may request from TEA or LBB [TEA, LBB, and LEB] prior to December [November] 1 of each even-numbered year, estimates of the annual costs of the Foundation School Program [under existing state law] for the succeeding biennium. The estimates shall be based on projected student counts and projected tax rates for the effective period. The methodology and assumptions used in computing the estimates of costs of the Foundation School Program may also be requested. [Unless requested otherwise, estimates shall be filed no later than October 15th.]

(c) (No change.)

§201.13. *Organization of the Committee.*

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

(c) The committee shall designate a clerk who shall be responsible for the maintenance of all committee records and who shall serve as committee liaison to the secretary of state in accordance with Texas Government Code, Chapter 2002 [Civil Statutes, Article 6252-13a].

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

(h) Notice of any meeting shall be posted in accordance with Texas Government Code, Chapter 551 [Civil Statutes, Article 6252-7].

§201.25. *Proposed Rules.*

The committee shall accept the recommendations of the [LEB]/LBB as the committee's proposed rules. Further the committee hereby empowers the committee clerk to prepare and deliver or cause to be delivered the said proposed rules to the Texas Register for publication.

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 November 13, 1996.

TRD-9616424

Pete Wassdorf

Deputy General Counsel, Office of the Governor

Foundation School Fund Budget Committee

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 463-1750

Chapter 203. *Cost of Education Index*

19 TAC §§203.1, 203.20, 203.25, 203.30

The Foundation School Fund Budget Committee (FSFBC) proposes amendments to §§203.1, 203.20, 203.25, and 203.30 concerning the cost of education index (CEI), an adjustment to the formula allocations of public school districts. The proposed amendments to the rule make the existing cost of education index applicable for the 1997-1998 and 1998-1999 school years.

Brian Wilson, Committee Clerk for the FSFBC, has determined that if the FSFBC does not act to adopt an index, the existing index and its funding would expire at the end of the 1996-1997 school year. Therefore the fiscal impact of enforcing or administering the proposed rule will be to continue to distribute \$1.1 billion in state aid to school districts for each of the 1997-1998 and 1998-1999 school years. The rule expires at the end of the 1998-1999 school year.

Mr. Wilson also has determined that for each year of the two years that the sections are in effect the public benefit anticipated as a result of enforcing the rule will be an adjustment to the formula allocations to school districts for factors beyond the control of school districts. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be presented at a public hearing at 9:30 a.m. on November 26, 1996, at Room E1.010 of the Capitol Extension, Austin, Texas, or by writing Mr. Brian Wilson, FSFBC Committee Clerk, Governor's Office of Budget and Planning, P. O. Box 12428, Austin, Texas 78711.

The amendments are proposed under the Foundation School Fund Budget Committee's authority in Texas Education Code §42.256.

The Texas Education Code, Chapter 42, Subchapters B, C, F, and H and Chapter 41, Subchapter A are affected by the proposed amendments.

§203.1. *General Provisions.*

This rule establishes a formula for the calculation of each public school district's cost of education index which will be used by the Central Education Agency in determining each district's state aid for the 1997-1998 [1995-1996] and 1998-1999 [1996-1997] school years. The cost of education index shall adjust for cost variations caused by factors beyond the control of school districts. An adjustment is made for small districts with fewer than 2,000 ADA that are not eligible for the small district adjustment in the Texas Education Code, § 42.103 [16.103].

§203.20. *Computation of Cost of Education Index.*

A district's cost of education index adjustment for the 1997-1998 [1995-1996] and 1998-1999 [1996-1997] school years shall be computed by the commissioner of education by calculating each district's cost adjustment in §203.10 of this title (relating to Calculation of Adjustment for Cost Variations). If a school district has more than 1,600 students but not more than 2,000 students in average daily attendance (ADA), the commissioner shall modify the cost adjustment in §203.10 by multiplying it by the following size factor:  $1.0 + ((2000 - \text{ADA}) * .00014)$ .

§203.25. *Adjustment of Basic Allotment.*

For the 1997-1998 [1995-1996] and 1998-1999 [1996-1997] school years, the commissioner shall adjust each district's basic allotment by applying the following formula:

$$\text{ABA} = \text{BA} * (((\text{Cost of Education Index} - 1) * .71) + 1)$$
 where "ABA" is the adjusted basic allotment; "BA" is the basic allotment; and "Cost of Education Index" is the Cost of Education Index computed in §203.20.

§203.30. *Data Values for Cost of Education Index Factors.*

(a) The data values for the data items listed in §203.5(b)-(f) of this title (relating to Definition of Terms and Data Elements) are

listed for each school district in Texas in the table entitled Listing of Data Values for 1991-1992/1992-1993 COE Index Factors which is adopted by reference as an official rule of the Foundation School Fund Budget Committee. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Governor's Budget and Planning Office, 1100 San Jacinto [201 East 11th Street], Austin, Texas 78701.

(b) (No change.)

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

Issued in Austin, Texas on November 13, 1996.

TRD-9616425

Pete Wassdorf

Deputy General Counsel, Office of the Governor

Foundation School Fund Budget Committee

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 463-1750

## Chapter 205. Equalized Funding Elements

### 19 TAC §§205.1, 205.11, 205.31, 205.41, 205.51, 205.61

The Foundation School Fund Budget Committee (FSFBC) proposes amendments to §§205.1, 205.11, 205.31, 205.41, 205.51, and 205.61, concerning equalized funding elements for the Foundation School Program. The purpose of the amendments is to update the rule to reflect the recommendations of the Legislative Budget Board under the Texas Education Code, §42.007, and the recodification of the Texas Education Code in Senate Bill 1 by the Seventy-fourth Legislature.

Brian Wilson, Committee Clerk for the FSFBC, has determined that if the FSFBC does not act to adopt one of the equalized funding elements, the cost of education index, the existing index and its funding would expire at the end of the 1996-97 school year. Therefore the fiscal impact of enforcing or administering the proposed amendments will be to continue to distribute \$1.1 billion in state aid to school districts for each of the 1997-1998 and 1998-1999 school years. Fiscal implications for state or local government as a result of enforcing or administering the amendments will be the same as current law. The rule expires at the end of the 1998-1999 school year.

The Legislative Budget Board has determined that the public benefit anticipated as a result of enforcing the amendments for the two year period will be that the school funding elements will meet the state policy objectives. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be presented at a public hearing at 9:30 a.m. on November 26, 1996, at Room E1.010 of the Capitol Extension, Austin, Texas, or by writing Mr. Brian Wilson, FSFBC Committee Clerk, Governor's Office of Budget and Planning, P. O. Box 12428, Austin, Texas 78711.

The proposed amendments are submitted under the Foundation School Fund Budget Committee's authority in Texas Education Code §42.256.

The Texas Education Code, Chapter 42, Subchapters B, C, F, and H and Chapter 41, Subchapter A are affected by the proposed amendments.

#### §205.1. General Provisions.

This rule establishes the equalized funding elements to be used by the Central Education Agency in determining each district's Foundation School Program allocations and state aid for the 1997-1998 [1995-1996] and 1998-1999 [1996-1997] school years. The equalized funding elements are to be appropriately set to meet the state funding policy in Texas Education Code § 42.001 [16.001].

#### §205.11. Basic Allotment.

The basic allotment shall be \$2,387 [\$2,300] per student in average daily attendance as defined in Texas Education Code § 42.101 [16.101].

#### §205.31. Program Cost Differentials.

The program cost differentials for special education, compensatory education, bilingual education, career and technology [vocational] education, and gifted and talented education shall be those defined in the Texas Education Code Chapter 42, Subchapter C [D]. [The allotments for transportation, teacher compensation, and technology shall be those defined in the Texas Education Code Subchapter D.]

#### §205.41. Maximum Guaranteed Level for the Guaranteed Yield Program (Tier 2).

The guaranteed yield shall be \$21.00 [\$20.55] per weighted pupil per cent of tax effort [as defined in Texas Education Code §16.302].

#### §205.51. Enrichment and Facilities Tax Rate under Tier 2.

The enrichment and facilities tax rate shall be calculated as provided in Texas Education Code §42.302 [16.302] and may not exceed \$0.64 per \$100 of valuation as specified in Texas Education Code §42.302 [16.303].

#### §205.61. Calculation of Weighted Students.

The number of students in weighted average daily attendance shall be calculated as specified in Texas Education Code § 42.302 [16.302]. For purposes of this calculation, the allotments under Texas Education Code Subchapters B and C [and D] shall represent the net allotments to each district.

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 November 13, 1996.

TRD-9616426

Pete Wassdorf

Deputy General Counsel, Office of the Governor

Foundation School Fund Budget Committee

Earliest possible date of adoption: December 23, 1996

For further information, please call: (512) 463-1750

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 229. Food and Drug

Licensure of Manufacturers of Food and Wholesale Distributors of Food-Including Good Manufacturing

25 TAC §§229.181-229.182

The Texas Department of Health (department) proposes amendments to §229.181 and §229.182, concerning licensure of manufacturers of food and wholesale distributors of food - including good manufacturing practices. The proposed amendments consolidate and establish new license fees for wholesale food distributors that also distribute drugs or devices (multiple product distributors) regulated under Health and Safety Code, Chapter 431. The amendments also expand the license fee schedule for firms that only distribute food (food wholesalers) from three to five categories, and adjust the fees to redistribute the cost of the inspection program.

Robert D. Sowards, Jr., Director, Manufactured Foods Division, has determined that for the first five-year period that §229.182(a)(4) is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section as proposed. Mr. Sowards also has determined that for the first five-year period that §229.182(a)(3) is in effect, there will be anticipated increase in revenue of \$68,700 per year which will be used by the department to maintain the inspection program. There will be no fiscal implications for local governments. Mr. Sowards also has determined that for each year of the first five years that the sections are in effect, the benefit to the public and regulated industry will be more efficient licensing procedures and less confusion for multiple product distributors. Consolidating the license requirements for multiple product distributors will reduce licensure fees for small businesses. The proposed fee schedule for food wholesalers does not increase fees for small businesses with annual food sales less than \$200,000. Fees will increase a maximum of \$100 for food wholesalers with annual food sales of \$200,000 or more. The anticipated economic cost to other food wholesalers are the fees set out in §229.182(a)(3). There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposed amendments may be submitted to Robert D. Sowards, Jr., Manufactured Foods Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0243. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§229.181. *Definitions.*

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

[Establishment-Each location where food is manufactured as defined in the Health and Safety Code, Chapter 431; however, a food service establishment or a commissary supplying food service establishments is not a manufacturer unless it regularly engages in the labeling,

combining, and purifying of food which is either sold for resale or packaged for sale in other than individual portions.]

Place of business-Each location where a person manufactures food or where a person holds food for wholesale distribution [is distributed]. The term "place of business" shall not include the location of a food service establishment or a commissary supplying food service establishments unless the business regularly engages in the labeling, combining, and purifying of food which is either sold for resale or packaged for sale in other than individual portions.

§229.182. *Licensing Fee and Procedures.*

(a) Licensing fee and exemptions.

(1) All food manufacturers [of food] in Texas shall obtain a license annually with the Texas Department of Health and shall pay a license fee as follows:

(A) \$25 for each place of business [per establishment] having [a] gross annual manufactured food sales [volume] of \$0.00-\$9,999.99 [for food products manufactured at that establishment];

(B) \$50 for each place of business [per establishment] having [a] gross annual manufactured food sales [volume] of \$10,000-\$24,999.99 [for food products manufactured at that establishment];

(C) \$100 for each place of business [per establishment] having [a] gross annual manufactured food sales [volume] of \$25,000-\$99,999.99 [for food products manufactured at that establishment];

(D) \$250 for each place of business [per establishment] having [a] gross annual manufactured food sales [volume] of \$100,000-\$199,999.99 [for food products manufactured at that establishment];

(E) \$400 for each place of business [per establishment] having [a] gross annual manufactured food sales [volume] of \$200,000-\$999,999.99 [for food products manufactured at that establishment];

(F) \$500 for each place of business [per establishment] having [a] gross annual manufactured food sales [volume] of \$1 million [\$1,000,000]-\$9,999,999.99 [for food products manufactured at that establishment]; and

(G) \$750 for each place of business [per establishment] having [a] gross annual manufactured food sales greater than or equal to [volume of] \$10 million [or more for food manufactured at that establishment].

(2) A food manufacturer [of food] operating an establishment wherein all manufacturing operations are regulated under statutes administered by the Texas Department of Health other than the Health and Safety Code, Chapter 431, shall be exempt from the payment of the license [licensing] fee.

(3) All food wholesalers [wholesale food distributors] in Texas shall obtain a license annually with the Texas Department of Health. Except as provided for in subsection (a)(4) of this section, food wholesalers [and] shall pay a license fee as follows:

(A) \$100 for each place of business [per establishment] having [a] gross annual food sales [volume] of \$0.00-



**\$199,999.99** [499,999.99 for food products distributed from that establishment];

(B) **\$200** for each place of business [300 per establishment] having [a] gross annual food sales [volume] of **\$200,000-\$499,999.99** [500,000-\$9,999,999.99 for food products distributed from that establishment];

(C) **\$300** for each place of business [500 per establishment] having [a] gross annual food sales [volume] of **\$500,000-\$999,999.99** [\$10 million or more for food products distributed from that establishment];

(D) **\$400** for each place of business having gross annual food sales of **\$1 million-\$9,999,999.99**; [250 per public food warehouse (terminal) which may have no gross annual volume of sales of food, but which is used for storage from which foods are distributed by one or more wholesale distributors of foods; and]

(E) **\$600** for each place of business having gross annual food sales of greater than or equal to **\$10 million**; and

(F)[E] **\$100** for each [per] drop ship location, operated by a food manufacturer for temporary storage of foods for the purpose of further distribution.

(4) A food wholesaler who is required to be licensed under this section and who is also required to be licensed as a wholesale drug distributor under §229.252(a)(1) of this title (relating to Licensing Fee and Procedures) or as a device distributor under §229.439(a)(1) of this title (relating to Licensure Fees) shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices) as follows:

(A) **\$200** for each place of business having combined gross annual sales of **\$0 - \$199,999.99**;

(B) **\$300** for each place of business having combined gross annual sales of **\$200,000 - \$499,999.99**;

(C) **\$400** for each place of business having combined gross annual sales of **\$500,000 - \$999,999.99**;

(D) **\$500** for each place of business having combined gross annual sales of **\$1 million - \$9,999,999.99**; and

(E) **\$750** for each place of business having combined gross annual sales greater than or equal to **\$10 million**.

(5) [(4)] For the purpose of collecting licensing fees under this section, a person that distributes both its own manufactured food and food it does not manufacture must obtain only a food manufacturer's license. However, when calculating the amount of the licensing fee, the manufacturer must include the total for all food distributed from the place of business [both the foods manufactured and the foods warehoused]. In addition, food warehousing locations operated by a food manufacturer [of foods], including locations from which foods are held for limited periods of time for distribution, and which are totally separate from any manufacturing location, must be individually licensed as food wholesalers.

(6) [(5)] For the purpose of collecting licensing fees under this section, a food broker which engages in the storage of food, even for limited periods of time, must obtain a license as a food wholesaler.

(7) [(6)] A firm that has more than one business location may request a one-time proration of fees when applying for a license for each new location. Upon approval by the department, the expiration date of the license for the new location will be established the same as the firm's previously licensed locations.

(b) License forms. License forms may be obtained from the **Bureau of Food and Drug Safety** [Division of Food and Drugs], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3182.

(c) License application. All food manufacturers [of food] and food wholesalers [wholesale food distributors] shall file a license application on a form furnished by the department. The application form shall be signed and verified, and shall contain the following information:

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

(5) a list of categories of gross annual sales [volume] which must be marked and adhered to by the licensee in the determination and paying of the license fee.

(d) Two or more establishments. If the food manufacturer or food wholesaler operates more than one place of business [establishment], each place of business [establishment] shall be licensed separately by listing the name and address of each place of business [establishment] on the license application.

(e)-(f) (No change.)

(g) Renewal of license.

(1) Each year, the food manufacturer or food wholesaler shall renew its license following the requirements of this section and §229.183 of this title (relating to Minimum Standards for Licensure).

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

(h) Amendment of license.

(1) Fees. A license that is amended, including a change of name, ownership, or a notification of a change in the location of a licensed place of business required under the Health and Safety Code, §431.2251, will require submission of license fees as outlined in subsection (a) of this section.

(2) Change in location of place of business. Not later than the 31st day before the date of the change, the license holder shall notify in writing the commissioner or the commissioner's designee of the license holder's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the place of business. Not later than the 10th day after the completion of the change of location, the license holder shall forward to the commissioner or the commissioner's designee the name and residence address of the individual in charge of the new place of business. Notice is considered adequate if the license holder provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the Texas Department of Health, **Bureau of Food and Drug Safety** [Division of Food and Drugs], 1100 West 49th Street, Austin, Texas 78756-3182.

(i) Sale of food, drugs, or devices. The provisions of this section regarding the sale of food, drugs, or devices shall be considered to include the manufacture, production, processing,



packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or device place of business.

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-9615692

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 23, 1996

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

## Licensure of Wholesale Device Distributors and Manufacturers

### 25 TAC §229.439

The Texas Department of Health (department) proposes an amendment to §229.439, concerning the licensure of device distributors and manufacturers. Specifically, the section covers license fees. The amendment will revise and update licensure fee schedules for device distributors and manufacturers to allow the department to recover the costs of inspection and administration of the program. The amendment simplifies licensure procedures by establishing a new fee schedule for distributors of more than one product (multiple product distributors) regulated under Health and Safety Code, Chapter 431, as well as manufacturers and distributors of medical devices.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, has determined that for the first five-year period that the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Ms. Culmo also has determined that for each year of the first five years that the section is in effect, the benefit to the public and regulated industry will be more efficient licensing procedures and less confusion for multiple product distributors. Consolidating the license requirements for multiple product distributors will reduce licensure fees for small businesses. The proposed fee schedule for device distributors and manufacturers with less than \$20,000 in gross annual sales will result in an increase of \$100 in licensure fees. The anticipated cost to other device manufacturers are the fees set out in §229.439(a)(3). There are no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments on the proposed amendment may be submitted to Thomas E. Brinck, Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §431.241, which provides the department with the authority to

adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendment will affect Health and Safety Code, Chapter 431.

§229.439. *Licensure Fees.*

(a) License fee.

(1) All device distributors [or manufacturers who distribute devices] in Texas shall obtain a license annually [and must apply for a license no later than 60 days following the effective date of these sections] with the Texas Department of Health (department). Except as provided for in subsection (a)(2) of this section, device distributors [and] shall pay a licensure fee for each place of business operated as follows:

(A) [(1)] \$200 [\$100] per distributor [or manufacturer] having gross annual device sales of \$0-\$499,999.99 [\$19,999.99];

(B) [(2)] \$450 [\$400] per distributor [or manufacturer] having gross annual device sales of \$500,000 - \$9,999,999.99 [\$20,000 - \$199,999.99]; and

(C) [(3)] \$700 [\$900] per distributor [or manufacturer] having gross annual device sales greater than or equal to \$10 million. [of \$200,000-\$19,999,999.99; and]

[(4)] \$1,500 per distributor or manufacturer having gross annual sales greater than or equal to \$20 million.]

(2) A device distributor who is required to be licensed under this section and who is also required to be licensed as a wholesale drug distributor under §229.252(a)(1) of this title (relating to Licensing Fee and Procedures) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing Fee and Procedures) shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices) as follows:

(A) \$200 for each place of business having combined gross annual sales of \$0 - \$199,999.99;

(B) \$300 for each place of business having combined gross annual sales of \$200,000 - \$499,999.99;

(C) \$400 for each place of business having combined gross annual sales of \$500,000 - \$999,999.99;

(D) \$500 for each place of business having combined gross annual sales of \$1 million - \$9,999,999.99; and

(E) \$750 for each place of business having combined gross annual sales greater than or equal to \$10 million.

(3) All device manufacturers in Texas shall obtain a license annually with the department and shall pay a licensure fee for each place of business operated as follows:

(A) \$200 per manufacturer having gross annual device sales of \$0 - \$499,999.99;

(B) \$900 per manufacturer having gross annual device sales of \$500,000 - \$9,999,999.99; and

(C) \$1,500 per manufacturer having gross annual device sales greater than or equal to \$10 million.

(b) (No change.)

(c) Sale of food, drugs, or devices. The provisions of this section regarding the sale of food, drugs, or devices shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or device place of business.

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-9615691

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 23, 1996

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



# WITHDRAWN RULES

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

## TITLE 43. TRANSPORTATION

### Part III. Automobile Theft Prevention Authority

#### Chapter 57. Automobile Theft Prevention Authority

##### 43 TAC §§57.48-57.51

Pursuant to the Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §§57.48-57.51, submitted by the Automobile Theft Prevention Authority has been auto-

matically withdrawn, effective June 27, 1996. The new sections as proposed appeared in the December 26, 1995, issue of the *Texas Register* (20 TexReg 11116).

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

TRD-9616555

Linda Young

Executive Director

Automobile Theft Prevention

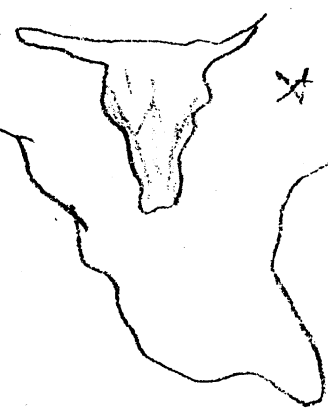
Effective date: June 27, 1996

Proposal publication date: December 26, 1995

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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 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

#### Conservation Rules and Regulations

#### 16 TAC §3.9, §3.46

The Railroad Commission of Texas (commission) adopts amendments to §3.9, relating to disposal wells, and §3.46, relating to fluid injection into productive reservoirs with changes to the proposed text as published in the June 18, 1996 *Texas Register* (21 TexReg 5506). The amendments increase opportunities to obtain variances from area-of-review requirements. The amendments also revise mechanical integrity testing requirements and update the reference to the Texas Water Commission (now the Texas Natural Resource Conservation Commission); substitute in the place of references to the Director of Underground Injection Control language allowing the commission to designate staff to handle certain responsibilities; delete the requirements that a verbal report of a leak in a well be confirmed in writing within five working days; and delete the requirements that 15 days advance written notice of intended transfer of a permit be provided.

The commission amends §3.9(2) to change the name of the agency from which letters regarding endangerment of freshwater strata are obtained from the Texas Department of Water Resources to the Texas Natural Resource Conservation Commission.

The commission amends both §3.9 and §3.46 to delete all references to "Director" or the "Director of Underground Injection Control" because that title was eliminated in connection with a recent reorganization of the commission. In place of the term "Director" or "Director of Underground Injection Control," the commission proposes to substitute the words "commission or its delegate" or "commission's delegate" as appropriate.

The commission amends §3.9(4)(C)(i) and §3.46(c)(3)(A) to clarify that a hearing will be held upon protest of an application received within 15 days of receipt of the application or of publication, whichever is later.

The commission is deleting §3.9(5)(B)(i) and §3.46(d)(2)(A). These provisions required 15 days advance written notice of permit transfer; however, this notification is unnecessary be-

cause the Commission tracks transfer of disposal and injection well permits through its P-4 compliance system.

The commission amends §3.9(6) and §3.46(e) to expand the bases upon which a variance from the area-of-review requirements of each rule may be granted, to allow variances to be granted on an areal basis in addition to an individual well basis, and to require that additional notice of an application for an areal variance be given.

Specifically, the amendments allow the commission or its delegate to grant a variance from the area-of-review requirements upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Factors that may be considered in granting such a variance include the area affected by pressure increases resulting from injection operations; the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Other compelling evidence might include information indicating the absence of groundwater and low risk of breakouts.

Except in the case of individual well variances sought on the basis of reservoir pressure increases, persons applying for an areal variance must publish notice of the application, in a form approved by the commission prior to publication, once in a newspaper of general circulation in the county or counties in which the variance would apply. Such notice must be at least three inches by five inches in size and must appear in a section of the newspaper containing state or local news items.

A copy of the application for an areal variance must also be provided to the manager of any underground water conservation district the boundaries of which are within the area where the variance would apply, city officials if the variance would apply wholly or partially within the limits of an incorporated city, appropriate county officials, and such other persons as may be specified by the commission or its delegate.

If no protest from an affected person is received during the public comment period on an application for a variance, the application may be granted administratively. If a protest is received, or if the variance is denied administratively, the person or persons applying for the variance may request a hearing. A hearing on an application for a variance from the area-of-review requirements may also be held if the commission's delegate determines that a hearing would be in the public interest.

Amendments to §3.9 and §3.46 also provide that an areal variance from the area-of-review requirements may be modified, terminated, or suspended after notice and opportunity for hearing is given to the affected operators. If a hearing on a proposed modification, termination, or suspension is held, any disposal or injection well permit applications filed after notice of the proposed modification, termination, or suspension is given and prior to the date of the final order must include the area-of-review information required in the absence of the areal variance.

The commission amends §3.9(8)(A) and §3.46(g)(1) to include a definition of the term tubing. For purposes of §3.9 and §3.46, tubing refers to pipe through which injection may occur and that is neither wholly nor partially cemented in place. The commission is also deleting obsolete language relating to wells drilled after the original effective date of §3.9 and §3.46.

The commission amends §3.9(10)(D) and §3.46(i)(4) by deleting the requirement that verbal leak reports be confirmed in writing within five working days. This requirement is unnecessary because, upon receipt of a verbal leak report, the commission will document the report by sending a letter to the operator directing that the well be shut in until the leak is repaired.

The commission amends §3.9(11)(A) and §3.46(j)(1) to require that the test pressure for wells where injection occurs down casing equal the maximum permitted injection pressure or 200 psig, whichever is greater.

The commission amends §3.9(11)(C) and §3.46(j)(3) to delete the example of monitoring injection rate/injection pressure relationships as an alternative to tubing-casing annulus pressure monitoring. The commission also amends these provisions to require that, where tubing-casing annulus pressure monitoring is authorized as an alternative to five-year pressure tests, the well must be pressure tested at least once every ten years after January 1, 1990.

The commission amends §3.9(11)(F) and §3.46(j)(6) to allow a reduction in the frequency of pressure tests required under existing permits. Where an existing permit requires pressure tests at six to 12 month intervals, the commission's delegate may, by letter of authorization, reduce the frequency of required tests provided that a test is required at least once every three years.

The commission is deleting §3.9(14) which specifies the effective date of the section. This provision is no longer necessary.

One commenter expressed support for updating the reference to the Texas Department of Water Resources in §3.9(2). This commenter also expressed support for substituting the term "commission or its delegate" or "commission's delegate" for "Director" or "Director of Underground Injection Control" in §3.9 and §3.46. No changes were made in response to these comments.

One commenter expressed support for the proposed changes to §3.9(4)(C)(i) and §3.46(c)(3)(A) which clarify that the 15-day protest period runs from the later of receipt of the application by the commission or publication of notice. No change was made in response to this comment. The commission notes, however, that it will continue to honor a protest to a disposal or injection well application filed more than 15 days after the permit is granted but prior to the date the permit is issued.

Three commenters expressed support for deletion of §3.9(5)(B)(i) and §3.46(d)(2)(A) which required 15 days advance written notice of a permit transfer. No changes were made in response to these comments. Five commenters expressed support for amending §3.9(6) and §3.46(e) to expand opportunities for obtaining variances from the area-of-review requirements of the rules. One of these commenters recommended that the word "incorporated" be inserted before "city" in the notice requirements found at §3.9(6)(D)(ii)(II) and §3.46(e)(4)(B)(ii). The commission agrees with this commenter and has revised the rules as recommended.

The commission has clarified the language of §3.9(6)(F) and §3.46(e)(6). The revised language clarifies that, if a hearing is held on a proposal to modify, terminate, or suspend an areal variance, any application filed after notice of hearing is issued and pending issuance of a final order must include the area-of-review information required in the absence of a variance.

One commenter expressed support for the definition of "tubing" in §3.9(8)(A) and §3.46(g)(1). No change was made in response to this comment.

Three commenters expressed support for eliminating the requirements of §3.9(10)(D) and §3.46(i)(4) for filing a written leak report once the leak has been verbally reported to the commission. No change was made in response to these comments.

One commenter objected to the proposal to amend §3.9(11)(A) and §3.46(j)(1) to require that the test pressure for wells where injection occurs down casing equal the maximum permitted injection pressure or 200 psig, whichever is greater. This commenter felt that this change was not necessary because most casing injection wells are not operated at the maximum authorized injection pressure. One commenter indicated that this change was reasonable because the casing could experience maximum authorized injection pressure under normal operating conditions. The commission disagrees with the first commenter. This amendment is appropriate because the well is permitted to operate at the maximum authorized injection pressure and therefore the casing may experience that pressure under normal operating conditions. The universe of wells expected to be affected by this change is small because most disposal and injection wells are equipped with tubing and packer. No change was made in response to either of these comments. One commenter expressed support for eliminating the examples of monitoring injection rate/injection pressure relationships as an alternative to tubing-casing annulus pressure monitoring in §3.9(11)(C) and §3.46(j)(3). No change was made in response to this comment. Three commenters expressed support for amending §3.9(11)(F) and §3.46(j)(6) to allow a reduction in the frequency of pressure tests required under existing permits by letter of authorization. No change was made in response to these comments. In the preamble to the proposed amendments to §3.9 and §3.46, the commission requested comment regarding the need to conduct mechanical integrity tests at the maximum authorized injection pressure rather than the lesser of the maximum authorized injection pressure or 500 psi. Twelve persons submitted comments in response to this request. All twelve commenters expressed opposition to such a change. A number of the commenters questioned whether such a change was necessary given that most casing leaks are detected under current requirements. Commenters also expressed concern

about the potential for unseating of tension-set packers and the impact that repeated testing of a string of casing at the maximum authorized injection pressure would have on casing integrity.

Commenters also expressed concern about increased test costs noting that in some cases the tubing and packer would have to be pulled in order to run the pressure test and in some cases equipment needed to test to maximum authorized injection pressures would not be available on-site. Most of the commenters indicated that such a change in mechanical integrity test requirements would cause many well failures resulting in increased operating costs and premature abandonment of many wells and fields.

The commission has determined not to propose amendments to §3.9 or §3.46 that would require that mechanical integrity tests be run at the greater of 500 psi or the maximum authorized injection pressure. Current testing procedures are adequate to identify leaks without the risk of weakening casing through repeated tests at excessive pressures or of unseating tension-set packers.

One commenter indicated that §3.9 and §3.46 should be amended to allow minor permit amendments to be made without submission of the application form currently required for permit amendments or payment of the \$100.00 fee. The commission is continuing to evaluate this recommendation and may propose additional rule changes in the future if warranted.

The following commenters expressed general support for the proposed amendments to §3.9 and §3.46: Texas Mid-Continent Oil & Gas Association; Texas Independent Producers and Royalty Owners Association; Permian Basin Petroleum Association; North Texas Oil and Gas Association; the East Texas Salt Water Disposal Company; Armor Petroleum, Inc.; Clark Operating, Inc.; Bettis, Boyle and Stovall, Inc.; John E. Rhoads; Unocal; Lone Star Pipeline Company.

The following commenter expressed neither support for nor opposition to the proposed amendments to §3.9 and §3.46: West Central Texas Oil and Gas Association.

The amendments to §3.9 and §3.46 are adopted under Texas Water Code, Chapter 27, which authorizes the commission to adopt and enforce rules relating to disposal and injection wells and Texas Natural Resources Code: §81.052, which authorizes the commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the commission under §81.051; §85.042(b), which authorizes the commission to adopt and enforce rules for the prevention of actual waste of oil or operations in the field dangerous to life or property; §85.201, which authorizes the commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; §85.202, which authorizes the commission to adopt rules to prevent waste of oil and gas in producing operations and to require wells to be operated in a manner that will prevent injury to adjoining property; and §91.101, which authorizes the commission to adopt rules relating to the production of oil and gas wells and the handling of any material associated with any operation or activity regulated by the commission.

§3.9. *Disposal Wells.*

Any person who disposes of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be responsible for complying with this section, Texas Water Code, Chapter 27, and Title 3 of the Natural Resources Code.

(1) (No change.)

(2) Geological requirements. Before such formations are approved for disposal use, the applicant shall show that the formations are separated from freshwater formations by impervious beds which will give adequate protection to such freshwater formations. The applicant must submit a letter from the Texas Natural Resource Conservation Commission, Austin, Texas, stating that the use of such formation will not endanger the freshwater strata in that area and that the formations to be used for disposal are not freshwater-bearing.

(3) (No change.)

(4) Notice and opportunity for hearing.

(A) (No change.)

(B) In order to give notice to other local governments, interested, or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the well will be located in a form approved by the commission or its delegate. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

(C) Protested applications:

(i) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, whichever is later, or if the commission or its delegate determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.

(ii) (No change.)

(D) If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the commission's delegate denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(5) Subsequent commission action.

(A) (No change.)

(B) A disposal well permit may be transferred from one operator to another operator provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on Commission records.

(6) Area of Review.

(A) Except as otherwise provided in this paragraph, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids

from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.

(B) The commission or its delegate may grant a variance from the area-of-review requirements of subparagraph (A) of this paragraph upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Such a variance may be granted for an area defined both vertically and laterally (such as a field) or for an individual well. An application for an areal variance need not be filed in conjunction with an individual permit application or application for permit amendment. Factors that may be considered by the commission or its delegate in granting a variance include:

(i) the area affected by pressure increases resulting from injection operations;

(ii) the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or

(iii) other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface.

(C) Persons applying for a variance from the area-of-review requirements of subparagraph (A) of this paragraph on the basis of factors set out in subparagraph (B)(ii) or (iii) of this paragraph for an individual well shall provide notice of the application to those persons given notice under the provisions of paragraph (4)(A) of this subsection. The provisions of paragraph (4)(C) and (D) shall apply in the case of an application for a variance from the area-of-review requirements for an individual well.

(D) Notice of an application for an areal variance from the area-of-review requirements under subparagraph (A) of this paragraph shall be given on or before the date the application is filed with the commission:

(i) by publication once in a newspaper having general circulation in each county, or portion thereof, where the variance would apply. Such notice shall be in a form approved by the commission or its delegate prior to publication and must be at least three inches by five inches in size. The notice shall state that protests to the application may be filed with the commission during the 15-day period following the date of publication. The notice shall appear in a section of the newspaper containing state or local news items;

(ii) by mailing or delivering a copy of the application, along with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission, to the following:

(I) the manager of each underground water conservation district(s) in which the variance would apply, if any;

(II) the city clerk or other appropriate official of each incorporated city in which the variance would apply, if any;

(III) the county clerk of each county in which the variance would apply; and

(IV) any other person or persons that the commission or its delegate determines should receive notice of the application.

(E) If a protest to an application for an areal variance is made to the commission by an affected person, local government, underground water conservation district, or other state agency within 15 days of receipt of the application or of publication, whichever is later, or if the commission's delegate determines that a hearing on the application is in the public interest, then a hearing will be held on the application after the commission provides notice of the hearing to all local governments, underground water conservation districts, state agencies, or other persons, who express an interest, in writing, in the application. If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the application is denied administratively, the person(s) filing the application shall have a right to hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(F) An areal variance granted under the provisions of this paragraph may be modified, terminated, or suspended by the commission after notice and opportunity for hearing is provided to each person shown on commission records to operate an oil or gas lease in the area in which the proposed modification, termination, or suspension would apply. If a hearing on a proposal to modify, terminate, or suspend an areal variance is held, any applications filed subsequent to the date notice of hearing is given must include the area-of-review information required under subparagraph (A) of this paragraph pending issuance of a final order.

(7) (No change.)

(8) Special equipment.

(A) Tubing and packer. Wells drilled or converted for disposal shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 100 feet above the top of the permitted interval. For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.

(B) (No change.)

(C) The commission or its delegate may grant an exception to any provision of this paragraph upon proof of good cause. If the commission or its delegate denies an exception, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(9) (No change.)

(10) Monitoring and reporting.

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

(D) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well.

(11) Testing.

(A) Before beginning disposal operations, the operator shall pressure-test the long string casing. The test pressure for wells equipped to inject through tubing and packer must equal the



maximum authorized injection pressure or 500 psig, whichever is less, but must be at least 200 psig. The test pressure for wells that are permitted for injection through casing must equal the maximum permitted injection pressure or 200 psig, whichever is greater.

(B) Each disposal well shall be pressure-tested in the manner provided in subparagraph (A) of this paragraph at least once every five years to determine if there are leaks in the casing, tubing, or packer. The commission's delegate may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

(C) As an alternative to the testing required in subparagraph (B) of this paragraph, the tubing-casing annulus pressure may be monitored and included on the annual monitoring report required by paragraph (1) of this section, with the authorization of the commission or its delegate and provided that there is no indication of problems with the well. Wells that are approved for tubing-casing annulus monitoring under this subparagraph shall be tested in the manner provided under subparagraph (A) of this paragraph at least once every ten years after January 1, 1990. The commission or its delegate may grant an exception for viable alternative tests or surveys.

(D)-(E) (No change.)

(F) In the case of permits issued under this section prior to (the effective date of this amendment) which require pressure testing more frequently than once every five years, the commission's delegate may, by letter of authorization, reduce the required frequency of pressure tests, provided that such tests are required at least once every three years. The commission will consider the permit to have been amended to require pressure tests at the frequency specified in the letter of authorization.

(12)-(13) (No change.)

**§3.46. Fluid Injection into Productive Reservoirs.**

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

(c) Notice and opportunity for hearing.

(1) (No change.)

(2) In order to give notice to other local governments, interested, or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the well will be located in a form approved by the commission or its delegate. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

(3) Protested applications:

(A) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, whichever is later, or if the commission or its delegate determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.

(B) (No change.)

(4) If no protest from an affected person is received by the commission, the commission's delegate may administratively approve

the application. If the commission's delegate denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(d) Subsequent commission action.

(1) (No change.)

(2) A disposal well permit may be transferred from one operator to another operator provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on Commission records.

(e) Area of Review.

(1) Except as otherwise provided in this subsection, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.

(2) The commission or its delegate may grant a variance from the area-of-review requirements of paragraph (1) of this subsection upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Such a variance may be granted for an area defined both vertically and laterally (such as a field) or for an individual well. An application for an areal variance need not be filed in conjunction with an individual permit application or application for permit amendment. Factors that may be considered by the commission or its delegate in granting a variance include:

(A) the area affected by pressure increases resulting from injection operations;

(B) the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or

(C) other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface.

(3) Persons applying for a variance from the area-of-review requirements of paragraph (1) of this subsection on the basis of factors set out in paragraph (2)(B) or (C) of this subsection for an individual well shall provide notice of the application to those persons given notice under the provisions of subsection (c)(1) of this section. The provisions of subsection (c) of this section shall apply in the case of an application for a variance from the area-of-review requirements for an individual well.

(4) Notice of an application for an areal variance from the area-of-review requirements under paragraph (1) of this subsection shall be given on or before the date the application is filed with the commission:

(A) by publication once in a newspaper having general circulation in each county, or portion thereof, where the variance would apply. Such notice shall be in a form approved by the commission or its delegate prior to publication and must be at

least three inches by five inches in size. The notice shall state that protests to the application may be filed with the commission during the 15-day period following the date of publication. The notice shall appear in a section of the newspaper containing state or local news items;

(B) by mailing or delivering a copy of the application, along with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission, to the following:

(i) the manager of each underground water conservation district in which the variance would apply, if any;

(ii) the city clerk or other appropriate official of each incorporated city in which the variance would apply, if any;

(iii) the county clerk of each county in which the variance would apply; and

(iv) any other person or persons that the commission or its delegate determines should receive notice of the application.

(5) If a protest to an application for an areal variance is made to the commission by an affected person, local government, underground water conservation district, or other state agency within 15 days of receipt of the application or of publication, whichever is later, or if the commission's delegate determines that a hearing on the application is in the public interest, then a hearing will be held on the application after the commission provides notice of the hearing to all local governments, underground water conservation districts, state agencies, or other persons, who express an interest, in writing, in the application. If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the application is denied administratively, the person(s) filing the application shall have a right to hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(6) An areal variance granted under the provisions of this subsection may be modified, terminated, or suspended by the commission after notice and opportunity for hearing is provided to each person shown on commission records to operate an oil or gas lease in the area in which the proposed modification, termination, or suspension would apply. If a hearing on a proposal to modify, terminate, or suspend an areal variance is held, any applications filed subsequent to the date notice of hearing is given must include the area-of-review information required under paragraph (1) of this subsection pending issuance of a final order.

(f) (No change.)

(g) Special equipment.

(1) Tubing and packer. Wells drilled or converted for injection shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 200 feet below the known top of cement behind the long string casing but in no case higher than 150 feet below the base of usable quality water. For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.

(2) (No change.)

(3) Exceptions. The commission or its delegate may grant an exception to any provision of this paragraph upon proof of good cause. If the commission or its delegate denies an exception, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(h) (No change.)

(i) Monitoring and reporting.

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

(4) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well.

(j) Testing.

(1) Before beginning injection operations, the operator shall pressure-test the long string casing. The test pressure for wells equipped to inject through tubing and packer must equal the maximum authorized injection pressure or 500 psig, whichever is less, but must be at least 200 psig. The test pressure for wells that are permitted for injection through casing must equal the maximum permitted injection pressure or 200 psig, whichever is greater.

(2) Each injection well shall be pressure-tested in the manner provided in paragraph (1) of this subsection at least once every five years to determine if there are leaks in the casing, tubing, or packer. The commission's delegate may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

(3) As an alternative to the testing required in paragraph (2) of this subsection, the tubing-casing annulus pressure may be monitored and included on the annual monitoring report required by subsection (i) of this section, with the authorization of the commission or its delegate and provided that there is no indication of problems with the well. Wells that are approved for tubing-casing annulus monitoring under this paragraph shall be tested in the manner provided under paragraph (2) of this subsection at least once every ten years after January 1, 1990. The commission or its delegate grant an exception for viable alternative tests or surveys.

(4)-(5) (No change.)

(6) In the case of permits issued under this section prior to (the effective date of this amendment) which require pressure testing more frequently than once every five years, the commission's delegate may, by letter of authorization, reduce the required frequency of pressure tests, provided that such tests are required at least once every three years. The commission will consider the permit to have been amended to require pressure tests at the frequency specified in the letter of authorization.

(k)-(n) (No change.)

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

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

TRD-9616407

Mary Ross McDonald

Deputy General Counsel, Office of the General Counsel

Railroad Commission of Texas

Effective date: December 4, 1996

proposal publication date: June 18, 1996  
For further information, please call: (512) 463-7008

## Conservation Rules and Regulations

### 16 TAC §3.32

The Railroad Commission of Texas adopts the repeal of §3.32, concerning gas well gas and casinghead gas shall be utilized for legal purposes without changes, and concurrently adopts new §3.32 with changes to the proposed text published in the May 31, 1996, issue of the *Texas Register* (21 TexReg 4875). The new version of §3.32 expands the existing rule to provide definitions of terms used in the rule and to authorize the release of non-measurable volumes of gas, the release of gas into the air that results from routine operations necessary to drill and operate wells efficiently, and the release of gas for a limited period from gathering, processing, or treatment operations. The new rule further expands the time period that an exception to the rule granted by the commission is in effect and provides that no exception is necessary for volumes equal to or less than 50 MCF per day. The new rule will eliminate needless paperwork and other administrative burdens on oil and gas operators by relieving operators from the requirement of obtaining an exception for the venting or flaring of non-measurable volumes of gas and insignificant volumes of gas necessary to conduct routine, efficient operations.

The commission received comments from two industry associations: Texas Mid-Continent Oil and Gas Association (TMOGA) and the Association of Texas Intrastate Natural Gas Pipelines (ATINGP). Both associations favored adoption of new §3.32 with suggested changes, but each association suggested different changes to §3.32(a) to the definitions and terms used in the rule to reflect industry usage. TMOGA suggested changes to the definition of "low pressure separator gas" to delete the direct reference to solution gas, and to identify storage tanks and gunbarrels as sources of tank vapors. ATINGP requested consistent use of the term "gas plant" throughout the rule. The commission agrees and these changes have been incorporated.

ATINGP requested clarification of "reasonably" in the definition of fugitive emissions and suggested the definition reflect economic expectations. The commission views "reasonably" as being "not extreme" or "without excess" and declines to adopt the suggested definition.

TMOGA requested §3.32(d) state that gas releases under this subsection are authorized to be vented. Because subsection (d) lists exempt gas releases, further clarification is not necessary. ATINGP requested the terms "amine treater" and "other gas handling equipment" be added as sources of releases under this subsection. The commission agrees and these have been added at §3.32(d)(1)(C) and (D).

Both TMOGA and ATINGP voiced concerns with the requirements in §3.32(e) that all gas releases be burned in a flare. Routine operations in each commenter's segment of the industry involves gas releases of 24 hours or less at locations not equipped to flare gas. Existing §3.32(c) allows gathering system releases of 24 hours or less to be vented. This provision was inadvertently dropped from the proposed new version of

the rule. The commission includes this provision in §3.32(e) to resolve industry concerns.

TMOGA has requested that all gas releases authorized under §3.32(f) be authorized by rule to be vented. The commission does not agree with this proposal. With the exception of periodic unloading of produced fluids from gas wells under §3.32(f)(1)(B), all other releases under subsection (f) are potentially large volumes or long-term releases and should be subject to a review of whether gas can be safely vented.

Section 3.32(f)(1)(C) and (g)(1) address gas releases due to gathering system and plant upsets. Both TMOGA and ATINGP asked that the time period for filing of an exception application be extended to the end of the business day following the first 24 hours of such an unplanned release unless extended by the commission or the commission's delegate. The commission agrees with this change because it will accommodate exception applications for continuation of releases which start during the early morning hours.

TMOGA requested that rule exceptions which are issued to an operator be made transferable. Because the commission has found the change of operatorship to be an important review and audit point during the life of these exceptions, the commission declines to adopt this request. As an alternative, however, the commission adopts in §3.32(h)(7) a 90-day period after a transfer of ownership to allow for the new operator to review and evaluate the need for continuation of the existing authority.

TMOGA proposed the option of consolidating multiple releases due to gathering system or plant upsets into one application for fee purposes. These are generally short-term gas releases having an impact on multiple leases or facilities. The commission incorporates this change at §3.32(h)(8).

ATINGP asked what form should be used to report volumes of gas released by gas gathering systems and gas plants. Gas releases from these operations are reported on Form R-3. A one-time filing of Form R-3 is employed to report gas releases from gathering systems that do not routinely file this form. Gas releases from production operations are reported on Form P-1 for oil leases and Form P-2 for gas wells.

ATINGP also requested the rule provide the commission district offices the authority to grant or renew exceptions. Due to the required collection of fees for these applications, this is not feasible at this time.

The repeal is adopted pursuant to Texas Natural Resources Code, §§81.052, 85.042, 85.201, 85.202, 86.042, 86.185, and 141.012, which authorizes the commission to make and enforce rules for conservation, prevention of waste, and protection of correlative rights regarding oil, gas, and geothermal resources in the state of Texas, and for all things necessary for governing and regulating persons and their operations under the jurisdiction of the commission.

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 November 13, 1996.

TRD-9616405  
Mary Ross McDonald

Deputy General Counsel, Office of the General Counsel  
Railroad Commission of Texas  
Effective date: December 4, 1996  
Proposal publication date: May 31, 1996  
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The new section is adopted pursuant to Texas Natural Resources Code, §§81.052, 85.042, 85.201, 85.202, 86.042, 86.185, and 141.012, which authorizes the commission to make and enforce rules for conservation, prevention of waste, and protection of correlative rights regarding oil, gas, and geothermal resources in the state of Texas, and for all things necessary for governing and regulating persons and their operations under the jurisdiction of the commission.

*§3.32. Gas Well Gas and Casinghead Gas Shall Be Utilized for Legal Purposes.*

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

(1) Fugitive emissions - releases of gas from lease production, gathering, compression, or gas plant equipment components, including emissions from valve stems, pressure relief valves, flanges and connections, gas-operated valves, compressor and pump seals, pumping well stuffing boxes, casing-to-casing bradenheads subject to the provisions of §3.17 of this title (relating to pressure on bradenhead in oil, gas or geothermal resource operations), pits, and sumps, that cannot reasonably be captured and sold or routed to a vent or flare.

(2) Gathering system - facilities employed to collect, compress, and transport gas to another gas gathering system, a gas plant, compression facility, or transmission line.

(3) Lease production facilities - production, separation, treating, compression, flowlines, storage, and other production handling equipment employed on a lease in the production of gas, condensate, and oil.

(4) Low pressure separator gas - gas separated or liberated from a gas-liquid stream in a low pressure separation facility. Low pressure separation facilities include but are not limited to separators, treaters, free water knockouts, and other associated equipment.

(5) Tank vapors - gas which evolves from oil, condensate, or water when placed in a gunbarrel or storage tank.

(b) Activities authorized by this section may be subject to rules and regulations promulgated by the United States Environmental Protection Agency under the federal Clean Air Act or the Texas Natural Resources Conservation commission under the Texas Clean Air Act.

(c) General Provisions. All gas from any oil well, gas well, gas gathering system, gas plant or other gas handling equipment shall be utilized for purposes and uses authorized by law, except as provided in this section. This section does not apply to gas transmission or gas distribution facilities or operations.

(d) Exempt Gas Releases.

(1) Releases of gas that are not readily measured by devices routinely used in the operation of oil wells, gas wells, gas

gathering systems, or gas plants, such as meters, are not required by the commission to be reported or charged against lease allowable production and are not subject to the remaining requirements of this section. Releases of gas exempt from the requirements of this section under this paragraph include, but are not limited to, the following:

(A) tank vapors from crude oil storage tanks, gas well condensate storage tanks, or salt water storage tanks, including makeup gas for gas blanket maintenance;

(B) fugitive emissions of gas;

(C) amine treater, glycol dehydrator flash tank and/or reboiler emissions;

(D) blowdown gas from flow lines, gathering lines, meter runs, pressurized vessels, compressors, or other gas handling equipment for construction, maintenance or repair;

(E) gas purged from compressor cylinders or other gas handling equipment for startup;

(F) gas released at a wellsite during drilling operations and prior to the completion date of the well, including gas produced during air or gas drilling operations or gas which must be separated from drilling fluids using a mud-gas separator, or mud-degasser; or

(G) gas released at a wellsite during initial completion, recompletion in another field, or workover operations in the same field, including but not limited to perforating, stimulating, deepening, cleanout, well maintenance or repair operations.

(2) Notwithstanding the foregoing, the commission or the commission's delegate may require the flaring of releases of gas not readily measured by devices routinely used in the operation of oil wells, gas wells, gas gathering systems, or gas plants, such as meters, if the commission or the commission's delegate determines that flaring is required for safety reasons.

(e) Gas Releases to be Burned in a Flare.

(1) Except as otherwise provided in subsections (d), (f)(1)(B) and (C), (g)(2), or an exception granted under subsection (h) of this section, all gas releases of greater than 24 hours duration authorized under the provisions of this section shall be burned in a flare if the gas can be burned safely. All gas releases of 24 hours' duration or less authorized under the provisions of this section may be vented to the air if flaring is not required for safety reasons or by other regulation and the gas can be safely vented.

(2) Gas releases authorized under this section must be managed in accordance with the provisions of §3.36 of this title (relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas) when applicable.

(3) An exception to the requirements of this subsection may be granted under subsection (h) by the commission or the commission's delegate to allow the venting of gas to the air for releases of greater than 24 hours' duration if the operator presents information that shows the gas cannot be both safely and continuously burned in a flare, and the gas can be safely vented.

(4) Notwithstanding the provisions of paragraph (1) of this subsection or an exception granted under subsection (h), the commission or the commission's delegate may require that the gas be flared if flaring is required for safety reasons.

(f) Gas Releases in Oil and Gas Production Operations.

(1) The following releases of gas resulting from routine oil and gas production operations are necessary in the efficient drilling and operation of oil and gas wells and are hereby authorized subject to the requirements of subsection (e) of this section. The released gas shall be measured or estimated in accordance with §3.27 of this title (relating to gas to be measured) and reported and charged against lease allowable production.

(A) Gas may be released for a period not to exceed ten producing days after initial completion, recompletion in another field, or workover operations in the same field, including but not limited to perforating, stimulating, deepening, cleanout, well maintenance or repair operations.

(B) Gas from a well that must be unloaded or cleaned-up to atmospheric pressure may be vented to the air for periods not to exceed 24 hours in one continuous event or a total of 72 hours in one calendar month.

(C) In the event of a full or partial shutdown by a gas gathering system, compression facility, or gas plant, gas from a lease production facility served by that gas gathering system, compression facility or gas plant may be released for a period not to exceed 24 hours. The operator shall notify the appropriate commission district office by telephone or facsimile as soon as reasonably possible after the release of gas begins. An operator may continue the release by flaring or by venting of the gas, if flaring is not required for safety reasons or by other regulation, beyond the initial 24-hour period, pending commission approval or denial of a request for an administrative exception under subsection (h) of this section. The operator shall file the request with the commission by the end of the next full business day following the first 24 hours of the release unless the deadline is extended by the commission or the commission's delegate.

(D) Hydrocarbon gas contained in the waste stream from a membrane unit or molecular sieve used to remove carbon dioxide, hydrogen sulfide, or other contaminants from a gas stream may be released, provided that at least 85% of the hydrocarbon gas in the inlet gas stream is recovered and directed to a legal use.

(E) Low pressure separator gas, not to exceed 15 mcf of hydrocarbon gas per gas well or 50 mcf of hydrocarbon gas per commission-designated oil lease or commingling point for commingled operations, may be released.

(2) The commission or the commission's delegate may administratively grant or renew an exception to the requirements or limitations of this subsection subject to the requirements of subsection (h) to allow additional releases of gas if the operator of a well or production facility presents information to show the necessity for the release. The volume of gas that is released must be measured or estimated in accordance with §3.27 of this title (relating to gas to be measured) and reported on the appropriate commission form and shall be charged to the operator's allowable production. Necessity for the release includes, but is not limited to, the following situations:

(A) Cleaning a well of solids or fluids or both for more than ten producing days following initial completion, recompletion in another field, or workover operations in the same field, including but not limited to perforating, stimulating, deepening, cleanout, or well maintenance or repair operations;

(B) Unloading excess formation fluid buildup in a wellbore for periods in excess of 24 hours in one continuous event or 72 hours total in one calendar month;

(C) Volumes of low pressure gas that can be measured with devices routinely used in oil and gas exploration, development, and production operations and that are not directed by an operator to a gas gathering system, gas pipeline, or other marketing facility, or other purposes and uses authorized by law due to mechanical, physical, or economic impracticability;

(D) For casinghead gas only, the unavailability of a gas pipeline or other marketing facility, or other purposes and uses authorized by law; or

(E) Avoiding curtailment of gas production which will result in a reduction of ultimate recovery from a gas well or oil reservoir.

(g) Gas releases from gas gathering system, gas plant or gas handling operations.

(1) The operator of a gas gathering system, gas plant, gas compressor facility or other gas handling equipment not directly associated with lease production of gas, shall not intentionally allow gas to be released for a period of more than 24 hours after the start of an upset condition. The operator shall notify the appropriate commission district office by telephone or facsimile as soon as reasonably possible after the release of gas begins. The volume of gas that is released must be measured or estimated in accordance with §3.27 of this title (relating to gas to be measured) and reported on the appropriate commission form. The provisions of this subsection do not apply to accidental releases which are subject to or reported pursuant to any other commission rule.

(2) The commission or the commission's delegate may administratively grant or renew an exception to the requirements or limitations of this subsection and allow additional releases of gas for a period greater than 24 hours if the operator presents information that shows the necessity for the release. An operator may continue the release by flaring or by venting of the gas, if flaring is not required for safety reasons or by other regulation, beyond the initial 24-hour period pending commission consideration of a request for an administrative exception under subsection (h) of this section. The request for exception is to be filed with the commission by the end of the next full business day following the first 24 hours of the release unless the deadline is extended by the commission or the commission's delegate. The following are examples of situations that may qualify for an exception under this paragraph:

(A) gas gathering system or gas plant construction, repairs or maintenance;

(B) gas plant turnaround; or

(C) emergency situations.

(h) Exceptions. The commission or the commission's delegate may administratively grant an exception authorized by this section provided that the requirements of this subsection are met.

(1) The request for an exception shall be accompanied by the fee required by §3.76(b)(5) of this title (relating to fees, performance bonds and alternative forms of financial security required to be filed).

(2) An administrative exception shall not exceed a period of 180 days.

(3) The 180-day limitation shall not apply for volumes of gas less than or equal to 50 mcf of hydrocarbon gas per day for each gas well, commission-designated oil lease, or commingled vent or flare point.

(4) Requests for exceptions for more than 180 days and for volumes greater than 50 mcf of hydrocarbon gas per day shall be granted only in a final order signed by the commission.

(5) A request for an exception to cover an operating emergency, system upset, or other unplanned condition may be submitted by facsimile transmission or other means, provided that an original signed request is accompanied by the fee required by subsection (h)(1) of this section and is received by the commission within three working days of the facsimile transmission request.

(6) Exceptions shall be issued to the operator of a gas well or commission-designated oil lease or commingling point for commingled operations and to the operator of a processing plant or other facility subject to this section.

(7) Exceptions are not transferable upon a change of operatorship. Operators shall have 90 days from the date of commission approval of a transfer of operatorship to review existing exceptions to this section and, if continuation of the exception is needed, to make application for a new exception. The existing exception and existing authority shall remain in effect during the 90-day review period. If an operator files an application and fee for a new exception before the 90-day review period expires and the 90-day review period expires before the commission acts on the application, the operator is authorized to continue to operate under the existing authority pending final commission action on the application.

(8) One application for exception to the requirements of this section may be filed for multiple releases from gas wells, commission-designated oil leases, gas gathering systems, gas compressors or other gas handling facilities when the release of gas is the result of a full or partial shut-down of a gas gathering system, gas plant, gas compressor or other gas handling facility under subsection (f)(1)(C) or (g)(1). Each well, lease or facility must be clearly identified by the applicant and a single fee paid under §3.76(b)(5) of this title (relating to fees, performance bonds and alternate forms of financial security required to be filed).

(i) Renewal and Amendment of Exceptions.

(1) The commission or the commission's delegate may renew an exception authorized by this section. An administrative renewal by the commission's delegate may not exceed a period of 180 days.

(2) A renewal shall be based upon a showing by the operator of a well, lease, or other facility subject to this section, that the conditions for which the initial exception or latest renewal was granted have not significantly changed despite a good-faith attempt by the operator to direct the gas to or utilize the gas for purposes and uses authorized by law.

(3) An operator shall file an application and fee for renewal of an exception with the commission 21 days prior to expiration of the existing exception authority. The request for renewal shall be accompanied by the fee required by §3.76(b)(5) of this title

(relating to fees, performance bonds and alternative forms of financial security required to be filed).

(4) If an operator files an application, accompanied by the required fee, for renewal of an existing exception to the requirements of this section at least 21 days before the expiration of the existing exception and the existing authority expires before the commission acts on the application, the operator is authorized to continue to operate under the existing authority pending final commission action on the application.

(5) The request by an operator to amend an existing exception will require a new application for exception if the amendment will result in a material change of the previously granted exception.

(6) Material changes include, but are not limited to, the following:

(A) Change of operator of the well or facility subject to this section; and

(B) An increase in volume of gas to be released or an extension of the duration of an exception greater than that provided for in subsection (h) of this section.

(j) Opportunity for hearing.

(1) An operator may request a hearing on any application for an exception or exception renewal required by this section.

(2) An operator may request a hearing on any request for administrative approval of an exception or exception renewal that has been denied by the commission or the commission's delegate.

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 November 13, 1996.

TRD-9616406

Mary Ross McDonald

Deputy General Counsel, Office of the General Counsel

Railroad Commission of Texas

Effective date: December 4, 1996

Proposal publication date: May 31, 1996

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

## Part II. Public Utility Commission of Texas

### Chapter 23. Substantive Rules

The Public Utility Commission of Texas adopts amendments to §23.3, relating to Definitions, and §23.41, relating to Customer Relations without changes to the proposed text as published in the August 20, 1996 issue of the *Texas Register* (21 TexReg7781).

The amendments are necessary to update references in the rules to state agencies by replacing existing references with the appropriate current references.

A public hearing on the amendments was scheduled for September 5, 1996 at 10:00 a.m. at Commission offices; however, no one attended the hearing.

The commission received no written comments on the proposed amendments.

### General Rules

#### 16 TAC §23.3

The amendment is adopted under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: PURA §1.101.

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 November 12, 1996.

TRD-9616392

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Effective date: December 4, 1996

Proposal publication date: August 20, 1996

For further information, please call: (512) 936-7162

### Customer Service and Protection

#### 16 TAC §23.41

The amendment is adopted under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: PURA §1.101.

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 November 12, 1996.

TRD-9616393

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Effective date: December 4, 1996

Proposal publication date: August 20, 1996

For further information, please call: (512) 936-7162

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 229. Food and Drug

#### Production, Processing, and Distribution of Bottled and Vended Drinking Water Amendments

#### 25 TAC §§229.81-229.88

The Texas Department of Health (department) adopts amendments to §§229.81 - 229.88, concerning production, processing, and distribution of bottled and vended drinking water. Section 229.81 is adopted with changes to the proposed text as published in the July 16, 1996, issue of the *Texas Register* (21 TexReg 6558). Sections 229.82 - 229.88 are adopted without changes and will not be republished.

The amendments update language regarding general provisions, sampling, water hauling, microbiological control standards, labeling and advertising, processing of vended water, certificates of competency, and requirements for approved sources. The amendments are adopted to comply with federal regulations and statutory changes enacted during the 74th Texas Legislature.

A summary of comments and the department's responses to the comments are as follows.

**COMMENT:** Concerning §229.81(c)(3), two commenters acknowledged that the standard of identity for "bottled water or drinking water" as proposed was identical language contained in the *Federal Register*, November 13, 1995, Id at 57124, but requested the department to incorporate language that would allow for mineral addition into its definition for "bottled water or drinking water."

**RESPONSE:** The department disagrees. The commenter and the department agree that federal standards of identity preempt state requirements which vary from the federal standards. Consequently, the department cannot change the text of these definitions. However, federal and state regulations concerning multi-component foods already permit the addition of minerals as long as the minerals are declared on the label as added ingredients and in the common name of the product (e.g., "Drinking Water with Added Magnesium").

**COMMENT:** Concerning §229.83, one commenter agreed with the department's rules for the sanitary hauling of bulk drinking water.

**RESPONSE:** The department agrees.

**COMMENT:** Concerning §229.83(c)(10), one commenter acknowledged that the standard of identity for "sparkling bottled water" proposed was identical to the U. S. Food and Drug Administration's (FDA) definition, but requested clarification on the interpretation of the "sparkling bottled water" definition.

**RESPONSE:** The department disagrees. The department has requested and received verbal clarification from FDA regarding the interpretation. The department does not feel that any additional clarification is necessary. Current multi component food labeling rules are in place to allow use of carbon dioxide in foods so long as it is declared as an ingredient and the usual or common name includes wording that carbon dioxide was added.



COMMENT: Concerning §229.85(b), one commenter stated that the proposed language would require additional labeling requirements for manufacturing firms by adding the identity of the water source on product labels. The commenter stated that current FDA rules require only source identity be provided on labels of water from a community or municipal water supply. Source information should be the property of the bottling company, and available for review by the department or FDA during routine inspections. Also, the commenter is of the opinion that requiring source water disclosure on package labels would subject the labeling to preemption by FDA.

RESPONSE: The department disagrees. The issue of source identity on the label has been discussed with FDA. FDA responded that if the department considers source identity on the label to be material fact, then the rule would not be subject to preemption. Further, the department believes the public considers source information to be a major consideration in the purchase of bottled water.

Minor editorial changes were made for clarification purposes.

The commenters were: Texas Bottled Water Association (TBWA), and International Bottled Water Association (IBWA). The commenters were in favor of the rules; however, they requested changes as discussed previously.

The amendments are adopted under Health and Safety Code, §145.011, which provides the department with authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the Commissioner of Health.

#### §229.81. General Provisions.

(a) Purpose. These sections establish definitions and standards for the processing and bottling of drinking and vended water. The sections also will supplement §§229.181-229.184 of this title (relating to Licensure of Manufacturers of Food and Wholesale Distributors of Food - Including Good Manufacturing Practices) and federal regulations in Title 21, Code of Federal Regulations, Part 165 concerning standards of quality, and Part 129 concerning processing and bottling of bottled drinking water.

(b) Requirements for specific standardized beverages. The department adopts by reference Title 21 Code of Federal Regulations, §165.110 concerning the identity, nomenclature, other label statements and label declarations for both bottled and vended water, except as modified by the Texas Board of Health in §229.85(b) of this title (relating to Labeling and Advertising).

(c) Definitions. The following words and terms, when used in this chapter, shall pertain to both bottled and vended water and shall have the following meanings unless the context clearly indicates otherwise.

(1) Approved source (When used in reference to a plant's product water or operations water) - A source of water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply, or any other source, that has been inspected and the water sampled, analyzed, and found to be of a safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from

the government agency or agencies having jurisdiction constitutes approval of the source and the water supply.

(2) Artesian water - Water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer is "artesian water" or "artesian well water."

(3) Bottled water or drinking water - Water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.

(4) Department - Texas Department of Health.

(5) Distilled water - Water which has been produced by a process of distillation and meets the definition of purified water in the United States Pharmacopeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(6) Fluoridated water - Water containing added fluoride.

(7) Ground water - Water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure.

(8) Mineral water - Water containing not less than 250 parts per million (ppm) total dissolved solids (TDS), coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source.

(9) Purified water - Water that has been produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of "purified water" in the United States Pharmacopoeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(10) Sparkling bottled water - Water that after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source.

(11) Spring water - Water derived from an underground formation from which water flows naturally to the surface of the earth.

(12) Sterile water or sterilized water - Water that meets requirements under "Sterility Tests" in the United States Pharmacopeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(13) Vended water - Vended water is: (A) water dispensed from any vending machine; or (B) unit servings of water dispensed in bulk by any operator or consumer from any water dispensing device.

(14) Vending machine - Any self-service device which upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses unit servings of water in bulk, without the necessity of refilling the machine between each operation.

(15) Well water - Water taken from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer.



(d) Other requirements for specific standardized beverages.

(1) Artesian water may be collected with the assistance of external force to enhance the natural underground pressure. On request, a bottler or vendor shall demonstrate to the department that the water level stands at some height above the top of the aquifer.

(2) For bottled water or drinking water, fluoride may be optionally added within the limitations established in 21 Code of Federal Regulations (CFR) Part 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water," and "tonic water." The processing and bottling of bottled water shall comply with applicable regulations in 21 CFR, Part 129.

(3) For fluoridated water, the total fluoride content levels cannot exceed levels contained in 21 CFR 165.110(b)(4)(ii).

(4) Ground water must not be under the direct influence of surface water as defined in 40 CFR 141.2.

(5) Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. No minerals may be added to this water.

(6) Water processed by demineralization that meets the purified water definition may alternatively be called "demineralized water." Alternatively, water that has been processed by deionization may be called "deionized water", and water processed by distillation may be called "distilled water", and water that has been processed by reverse osmosis may be called "reverse osmosis water". Also, if the water has been processed by either of the previously listed methods the water may be called "(blank) drinking water", with the blank being filled in with one of the defined terms describing the method of processing.

(7) Spring water shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. There shall be a natural force causing the water to flow to the surface through a natural orifice. The location of the spring shall be identified. Spring water collected with the use of an external force shall be from the same underground stratum as the spring, as shown be a measurable hydraulic connection using a hydro geologically valid method between the bore hole and the natural spring, and shall have all the physical properties, before treatment, and be of the same composition and quality, as the water that flows naturally to the surface of the earth. If spring water is collected with the use of an external force, water must continue to flow naturally to the surface of the earth through the spring's natural orifice.

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-9615689

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: November 19, 1996

Proposal publication date: July 16, 1996

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

## Administrative or Civil Penalties

### 25 TAC §229.261

The Texas Department of Health (department) adopts an amendment to §229.261, concerning assessment of administrative or civil penalties, with changes to the proposed text as published in the August 13, 1996 issue of the *Texas Register* (21 TexReg 7637); and the correction of error notice published in the September 20, 1996, issue of the *Texas Register* (21 TexReg 9094).

This section is updated in response to new or amended legislation providing for the assessment of administrative or civil penalties in Health and Safety Code, Chapter 431 (Texas Food, Drug, and Cosmetic Act); Chapter 432 (Texas Food, Drug, Device, and Cosmetic Salvage Act); Chapter 437 (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors); Chapter 466 (Regulation of Synthetic Narcotic Drugs in Treatment Programs); Chapter 145 (Tanning Facility Regulation Act); and Chapter 146 (Tattoo Studio Act).

The amended section updates the penalty ranges for each severity level, includes new examples of violations, and permits penalty adjustments based upon successful implementation of an effective Hazard Analysis and Critical Control Point system or successful completion of an accredited Food Protection Management Course.

A summary of comments and the department's responses to the comments are as follows.

COMMENT: Concerning §229.261(i)(3)(L), one commenter believed that over-the-counter drugs cannot be diverted.

RESPONSE: The department disagrees with this commenter, because over-the-counter drugs can be diverted outside legal distribution channels for production of illegal drugs or used to adulterate foods.

Minor editorial changes were made for clarification purposes. With regard to penalty adjustments for successful implementation of effective Hazard Analysis and Critical Control Point (HACCP) plans, the term "voluntary" was added to §229.261(h)(4) and §229.261(h)(4)(A) to clarify that only those establishments not required by regulation to implement HACCP are eligible for the penalty adjustment. Seafood processors will be required to have mandatory HACCP systems effective December 18, 1997. These processors and any others required to have HACCP systems will not be eligible for this penalty adjustment.

The commenter was an individual who expressed a concern as previously described.

The amendment is adopted under the Health and Safety Code, §§431.241, 432.011, 437.056, 466.004, 145.011, 146.015, and 12.001 which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§229.261 *Assessment of Administrative or Civil Penalties*

(a) Proposals for assessment of administrative or civil penalties. The department shall propose to assess administrative or civil penalties in accordance with the requirements of the Health and Safety Code, Chapter 145 relating to Tanning Facility Regulation Act; Chapter 146 relating to Tattoo Studio Act; Chapter 431 relating to Texas Food, Drug, and Cosmetic Act; Chapter 432 relating to Texas Food, Drug, Device, and Cosmetic Salvage Act; Chapter 437 relating to Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors; and Chapter 466 relating to Regulation of Narcotic Drug Treatment Programs.

(b) Assessment of administrative or civil penalties and conduct of hearings. The department shall assess administrative or civil penalties and conduct hearings pursuant to those administrative penalties in accordance with the appropriate statute in subsection (a) of this section and rules adopted under it; the Administrative Procedure Act, Texas Government Code §§2001.001-2001.92; and the department's formal hearing procedures in §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(c) (No change.)

(d) Severity levels.

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

(3) Examples of severity levels. Several examples are set out in subsection (i) of this section.

(e) Levels of penalties. Except as provided for in subsection (f) of this section relating to retail food establishments and subsection (g) of this section relating to tattoo studios, the department will impose different levels of penalties per day, per violation, for the following severity level violations:

- (1) Level I - \$15,000-25,000;
- (2) Level II - \$10,000-15,000;
- (3) Level III - \$5,000-10,000;
- (4) Level IV - \$ 2,500-5,000; and
- (5) Level V - \$1,000-2,500.

(f) Levels of penalties for retail food establishments. As to retail food establishments, the department will impose different levels of penalties per day, per violation, for the following severity level violations:

- (1) Level I - \$7,500-10,000;
- (2) Level II - \$5,000- 7,500;
- (3) Level III - \$2,500- 5,000;
- (4) Level IV - \$1,250- 2,500; and
- (5) Level V - \$500- 1,250.

(g) Levels of penalties for tattoo studios. As to tattoo studios, the department will impose different levels of penalties per day, per violation, for the following severity level violations:

- (1) Level I - \$4,000-5,000;
- (2) Level II - \$3,000-4,000;
- (3) Level III - \$2,000-3,000;
- (4) Level IV - \$1,000-2,000; and

(5) Level V - \$250-1,000.

(h) Adjustments to penalties. The department may make adjustments to the penalties listed in subsections (e), (f), or (g) of this section for any one of the following factors.

(1) Previous violations. The department may consider previous violations. The penalty may be reduced or increased within the specified range of each severity level for past performance. Past performance involves the consideration of the following factors: whether the previous violation was identical or similar to the current violation; how recent the previous violation was; the number of previous violations; and the violator's response to previous violation(s) in regard to correction of the problem.

(2) Demonstrated good faith. The department may consider good faith effort(s) of the violator to correct the violations and demonstrate compliance with the department's rules and regulations as a basis to reduce the proposed penalty. The penalty may be reduced within the specified range of each severity level if good faith efforts to correct a violation have been, or are being made. Good faith effort will be determined by the department on a case-by-case basis. All good faith effort(s) to comply with the department's rules and regulations must be fully documented by the violator to merit consideration from the department as to whether to reduce the proposed penalty.

(3) Hazard to the health and safety of the public. The department may consider the hazard to the health and safety of the public. The penalty may be increased within the specified range of each severity level when a direct hazard to the health and safety of the public is involved. It shall take into account, but need not be limited to, the following factors:

(A) whether any death(s), disease or injuries have occurred from the violation;

(B) whether any existing conditions contribute to a situation that could expose humans to a health hazard;

(C) the impact that the hazard has on various segments of the population such as children, surgical patients, and the elderly; and

(D) whether the consequences would be of an immediate or long-range hazard.

(4) Implementation of a voluntary Hazard Analysis Critical Control Point (HACCP) Plan.

(A) The department may consider implementation of a voluntary Hazard Analysis and Critical Control Point (HACCP) plan. The penalty may be reduced within the specified range of each severity level if the person, firm, or corporation implements a voluntary HACCP plan which is effective in correcting the violation(s) within 60 days of receiving notice of the violation(s). The HACCP plan is a written document based on the principles of HACCP, a food safety control system, which delineates the procedures to be followed to assure the control of a specific process or procedure. The HACCP plan shall include:

(i) an analysis of biological, chemical, or physical hazards that may cause a food to be unsafe for consumption and a list of steps in the process where significant hazards occur with descriptions of the preventive measures;

(ii) identification of the critical control points (CCPs) in the process at which control can be applied and a food safety hazard can be prevented, eliminated, or reduced to acceptable levels;

(iii) critical limits or specifications which must be met for each preventive measure associated with each identified CCP;

(iv) CCP monitoring requirements and procedures for using the results to adjust the process and maintain control;

(v) corrective actions to be taken when monitoring indicates there is a deviation from established critical limit;

(vi) effective record-keeping procedures that document the HACCP system; and

(vii) procedures for verification that the HACCP system is working correctly.

(B) Correction of violations through implementation of the HACCP plan will be determined by the department on a case-by-case basis. The HACCP plan and all required HACCP records shall be provided for review and copying upon request of an authorized agent of the commissioner. All required HACCP records shall be maintained at the plant for two years or longer if the product remains in distribution.

(5) Requirement of food manager training. The penalty may be reduced within the range specified for each severity level upon successful completion of a Food Protection Manager Certification course accredited by the department by all managers of a food service establishment or retail food store operation.

(6) Adjustments. Adjustments to the penalty amounts enumerated in paragraphs (1)-(5) of this subsection may not exceed or fall below the limitations described in subsections (e), (f), and (g) of this section.

(i) Examples of severity levels. The following examples of severity levels are neither exhaustive nor controlling. They reflect only the seriousness of the violation and not the history of previous violations, the hazard to the health and safety of the public, or the demonstrated good faith.

(1) Severity I - most significant violations.

(A) A foodborne disease outbreak results from consumption of a processed food product. Laboratory tests confirm the product is contaminated with pathogenic bacteria associated with insanitary conditions. Investigation reveals the processor continued operating during a sewage back-up in the food processing area.

(B) A retail food establishment is implicated in a foodborne disease outbreak. Epidemiologic analysis identifies the food as the source of the illness. Follow-up investigation at the establishment reveals the food is prepared or held at temperatures that pose a critical health hazard.

(C) (No change.)

(D) A person, firm, or corporation manufactures an unapproved drug and/or device that is associated with death or injury to the user.

(E) A person, firm, or corporation distributes an unapproved drug and/or device as a cure or treatment for a life

threatening illness, such as cancer or AIDS, and is associated with death or injury to the user.

(F) A narcotic treatment program's failure to comply with federal and state regulations is associated with the death or injury of a patient.

(G) A tattoo studio does not use properly sterilized tattooing equipment and has consumer complaints of infection associated with the application of tattoos.

(H) A tanning facility replaces ultraviolet lamps in its tanning device with higher intensity, non-equivalent lamps or installs a timer for its tanning device which causes the device to exceed the maximum allowable exposure time determined by the manufacturer. Either of these changes result in second or third degree burns to a user of a device, requiring the user to seek medical attention.

(I) A tanning facility fails to provide protective eye-wear to a user of its tanning device which results in the user suffering corneal burns or other injuries to the eye.

(2) Severity II - very significant violations.

(A) (No change.)

(B) Inspection of a food establishment reveals food temperature violations posing a potential health hazard. Laboratory tests confirm the food is contaminated with pathogenic microorganisms. No foodborne illness outbreaks have been previously reported to the department from the owner, manager, or employee of establishment, or from the public.

(C) Inspection of a food establishment reveals the presence of plumbing violations possibly causing contamination of the facility's water supply. Laboratory analysis indicates the water supply is contaminated. No foodborne outbreaks have been previously reported to the department from the owner, manager, or employee of the establishment, or from the public.

(D) A grain dealer has distributed tons of corn for human consumption. Laboratory tests confirm the corn contains aflatoxin that exceeds the level for human consumption.

(E) A person, firm, or corporation is distributing counterfeit drugs and/or devices to the public.

(F) A person, firm, or corporation is manufacturing a drug or device determined by the department to be potentially harmful to the public or without pre-market approval.

(G) A person, firm, or corporation diverts dangerous drugs and/or controlled substances outside legal distribution channels or fails to take adequate steps to prevent illegal distribution.

(H) A narcotic treatment program admits a patient or patients into maintenance treatment who does not meet the minimum standards for admission.

(I) Evidence is discovered that a tattoo studio is illegally tattooing minors.

(J) A tanning facility replaces ultraviolet lamps in its tanning device with higher intensity, non-equivalent lamps or installs a timer on its tanning device which causes the device to exceed the maximum allowable exposure time determined by the manufacturer. No injuries due to over exposure were reported by the owner, manager, or employee of the facility, or by the public.

(3) Severity III - significant violations.

(A) Inspection of a food establishment reveals the presence of pooled sewage near the water well. There is no indication the water supply is contaminated, but there is a great potential for occurrence.

(B) Inspection of a food establishment reveals food ingredients contaminated by dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding drainage, overhead leakage, or overhead drippage from condensation. None of the contaminated food ingredients has been used to make the finished product.

(C) A bottling plant has repeatedly produced beverages that contain foreign objects such as cigarette packages, tooth brushes, metal fragments, or other foreign matter.

(D) Inspection of a food establishment reveals the establishment is operating without hot water or without an adequate water supply.

(E) Inspection of a food establishment reveals employees touching ready-to-eat foods with unclean hands.

(F) Inspection of a food establishment reveals unclean, unsanitized food contact surfaces of equipment.

(G) The operator of an establishment refuses to permit an authorized agent of the department to conduct an inspection, collect samples, or otherwise perform his/her official duties.

(H) A person, firm, or corporation fails to comply with the current good manufacturing practices for finished pharmaceuticals or devices.

(I) An applicant has falsified information on the license application to the department concerning a wholesale drug or device.

(J) A narcotic treatment program delivers narcotic drugs to a patient without a physician's order.

(K) An inspection reveals that a narcotic treatment program fails to perform required laboratory tests on program patients such as tuberculosis screens, urine analysis, or other required tests.

(L) A person, firm, or corporation diverts over-the-counter drugs outside legal distribution channels or fails to take adequate steps to prevent illegal distribution.

(M) A tattoo facility operator fails to report to the department an injury or illness associated with a tattoo.

(N) A tanning facility operator allows a consumer to be exposed to ultraviolet radiation from its tanning device more than once in a 24-hour period.

(O) A sanitizer used to sanitize the body contact surfaces of a tanning device was tested and found to have an active ingredient concentration that is lower than recommended by the manufacturer. The body contact surfaces of a tanning device are tested and found to be positive for human pathogenic bacteria. No injuries to users were reported to have occurred as a result of this incident.

(P) A tanning facility fails to report injuries or illnesses associated with one of its tanning devices to the department.

(4) Severity IV - violations.

(A) A frozen shrimp processor has failed to declare sodium bisulfite on the labeling of his five pound and ten pound boxes of shrimp tails.

(B) (No change.)

(C) Inspection of a food establishment reveals evidence of current rodent or insect activity, but no contaminated foods are identified.

(D) A person, firm, or corporation is distributing drugs or devices that have been held outside of recommended storage temperatures.

(E) A person, firm, or corporation is distributing damaged and expired drugs or devices.

(F) A person, firm, or corporation is distributing drugs or devices labeled only in a foreign language.

(G) An applicant has falsified information on a tattoo or tanning facility license application.

(H) A physician is administering or dispensing a narcotic drug to treat opiate addiction outside a licensed narcotic treatment program or detoxification hospital, not including addiction treatment performed as an incidental adjunct to medical or surgical treatment of conditions other than addiction.

(I) The work surfaces in a tattoo studio are not properly cleaned and disinfected.

(J) A tanning facility falsifies or fails to maintain information required to be kept in individual consumer records, such as ultraviolet radiation exposure times, frequency of ultraviolet radiation exposures, or informed consent for minors.

(5) Severity V - minor violations.

(A)-(B) (No change.)

(C) A food manufacturer fails to label or misbrands a product resulting in minor public health or fraudulent significance.

(D) A person, firm, or corporation has failed to obtain a required license or permit from the department.

(E) A person, firm, or corporation is distributing drugs or devices with inaccurate or misleading labeling which the department determines is not likely to cause death or injury.

(F) A narcotic treatment program is not providing required counseling services for patients.

(G) An inspection of a tattoo studio reveals the studio to be unsanitary or in general disrepair and there are no complaints of infection associated with the application of tattoos.

(H) Warning signs in a tanning facility do not comply with size, design, or content requirements.

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-9615688

Susan K. Steeg



General Counsel  
 Texas Department of Health  
 Effective date: November 19, 1996  
 Proposal publication date: August 13, 1996  
 For further information, please call: (512) 458-7236

**TITLE 28. INSURANCE**

**Part I. Texas Department of Insurance**

**Chapter 11. Health Maintenance Organizations**

**Subchapter S. Solvency Standards for Managed Care Organizations Participating in Medicaid**

**28 TAC §§11.1801-11.1805**

The Commissioner of Insurance adopts new §§11.1801-11.1805, concerning the solvency standards required for managed care organizations participating in the Medicaid Program administered by the State of Texas. The new sections are adopted without changes to the proposed text as published in the October 1, 1996, issue of the *Texas Register* (21 TexReg 9407). No hearing was requested by any person.

Article 4413(502) §§16A-16G of the Texas Civil Statutes (as amended by Senate Bill 10 enacted in the 74th Legislature) provides for the development of a health care delivery system for the State Medicaid Program, and grants the Commissioner of Insurance the authority to promulgate regulations creating standards of solvency for participating managed care organizations. Moreover, Article 1.61 of the Texas Insurance Code (as amended by Senate Bill 600 enacted in the 74th Legislature) requires the Texas Department of Insurance, in conjunction with the Texas Department of Health, to establish fiscal solvency standards for managed care organizations serving State Medicaid clients. This regulation has been presented to and approved for publication by the State Medicaid Office and the advising MCAC Committee on September 12, 1996. The sections are necessary to establish the standards required under Article 4413(502) §§16A-16G of the Texas Civil Statutes and Article 1.61 of the Texas Insurance Code.

These sections create an overall buffer and safety net for the state and for creditors, and to reasonably ensure the financial ability of the managed care organizations to pay for the delivery of health care services. Moreover, no guaranty fund coverage exists in the event of an insolvency of a HMO, and these rules are designed to provide for the transition, without excessive costs to the state, of Medicaid clients from HMOs less likely to meet their obligations to HMOs that are more financially sound. Therefore, to reasonably ensure the prudent financial soundness of the MCOs, the capitalization level is required as specified herein.

The new sections are adopted in conjunction with the related regulations being adopted and/or amended by the Texas Health and Human Services Commission, 1 TAC Chapter 353 (21 TexReg 7303), the Texas Department of Health, 25 TAC Chapter 30 (21 TexReg 7322), and the Texas Department of

Mental Health and Mental Retardation, 25 TAC Chapter 401 (21 TexReg 7335).

These sections establish the standards of solvency for managed care organizations participating in the State Medicaid Program. Section 11.1801 specifies the entities subject to this regulation, and requires compliance with other regulatory standards and requirements associated with a particular MCO. Section 11.1802 provides for minimum solvency requirements, which are effected by the existence of an unconditional guarantee from a sponsoring organization for the benefit of a MCO that complies with section 11.1804. In addition, existing MCOs and Medicaid contracts are grandfathered for one year under section 11.1802. Sections 11.1803 and 11.1805 delineate the requirements for statutory deposits and performance and fidelity bonds.

No written comments were received by the department.

This subchapter is adopted pursuant to Article 1.61 of the Texas Insurance Code which directs the Commissioner of Insurance to adopt fiscal solvency standards for the State Medicaid Program, and Article 4413(502) §§16A-16G of the Texas Civil Statutes which provides for the development of a system to deliver Medicaid benefits including the creation of solvency standards. Article 1.03A of the Texas Insurance Code authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the Texas Department of Insurance.

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

Issued in Austin, Texas on November 12, 1996.

TRD-9616364  
 Caroline Scott  
 General Counsel and Chief Clerk  
 Texas Department of Insurance  
 Effective date: December 3, 1996  
 Proposal publication date: October 1, 1996  
 For further information, please call: (512) 463-6327

**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part XX. Edwards Aquifer Authority**

**Chapter 701. Filing and Processing of Applications**

The Edwards Aquifer Authority promulgates new Chapter 701 of Title 31 of the Texas Administrative Code, concerning the filing and processing of permit applications, by adopting new subchapters A and B, §§701.1-701.5 and 701.11- 701.13; 701.15-701.19; 701.21 and 701.22. Proposed §§701.1, 701.4, 701.5, 701.11, 701.12, 701.13, 701.15, 701.16, 701.17, 701.18, 701.19, 701.21 and 701.22 are adopted with changes to the proposed text as published in the September 3, 1996 *Texas Register* (21 Tex. Reg. 8401). Proposed §§702.6, 701.14 and 701.20 are withdrawn and not adopted. Sections 701.2 and 701.3 are adopted without changes and will not be republished.

The Authority adopts these rules pursuant to the Conservation Amendment of the Texas Constitution, Article 16, 59, and the powers and duties of the Authority to promulgate rules and implement and enforce a permit system for withdrawals of water from the Edwards Aquifer under the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993) (the "Act"), as amended by chapter 621, 74th Legislature, Regular Session (1995), §§1.08, 1.11, 1.14, 1.15, 1.16, 1.17, 1.26, 1.29, 1.35, 1.36, 1.37, 1.38, and 1.40, and under the Texas Water Code, Chapter 36.

These new rules are necessary to provide a procedure by which to file an application for a permit authorizing withdrawals of water from the Edwards Aquifer with the Authority, particularly the filing of initial declarations of historical use under §1.16 of the Act. In addition, the rules specify the date by which declarations of historical use must be filed with the Authority. The deadline for filing these claims is December 30, 1996. This date carries out the intent of the legislation by requiring these declarations to be filed six months following the actual effective date of the Act. The express terms of the Act provided that declarations of historical use were to be filed with the Authority by March 1, 1994. The Act was intended by the 73rd Legislature to become effective on September 1, 1993, with the required filing date following the effective date by six months. However, the effectiveness of the Act was unexpectedly delayed by objections under the federal Voting Rights Act. Those objections were resolved by the 1995 amendment to the Act that provided for the election, rather than the appointment of the board of directors.

Constitutional objections were then raised against the Act in state court that resulted in an injunction barring implementation of the Act. The injunction was dissolved by the Texas Supreme Court on June 28, 1996, and the Act thereby became effective on that date. *Barshop v. Medina County Underground Water Conservation District*, Case Number 95-0881. In its opinion upholding the Act, the Supreme Court held that the original March 1, 1994 filing date was directory rather than mandatory and recognized that the original intent of the Legislature could be carried out by requiring the filings of declarations of historical use six months following the actual effective date of the Act. The Supreme Court rejected the argument that the March 1, 1994 filing date was an immovable, fatal flaw in the legislation. Moving forward the filing date for these declarations to December 30, 1996, carries out the original legislative intent and the remedy for effectuating that intent endorsed by the Texas Supreme Court by providing for a six-month filing timeframe measured from the actual effective date of the Act.

These new rules as adopted differ in some respects from the proposed published rules based on comments received from the public and further review by staff. Proposed §§701.6, 701.14 and 701.20 have been withdrawn in their entirety. Certain paragraphs of proposed §701.21, have been withdrawn and new paragraphs have been added. Specific changes and reasoned justification for the changes and agency responses to comments are addressed in the Summary of Comments. Adopted rules are referred to by their numbers as proposed. Because three sections were withdrawn in their entirety, the numbering scheme for the adopted rules will skip these sections. These

sections, §§701.6, 701.14 and 701.20 will be reserved for future use.

The purpose of these rules is to prescribe a uniform procedure for filing applications for permits with the Authority. Subchapter A relating to general provisions contains §§701.1-701.5 governing the filing of permit applications. Section 701.1 sets out definitions and §701.2 states that the purpose of the chapter is to prescribe a uniform procedure for filing applications for permits. Section 701.3 lists the four types of permits authorized by the Act. Section 701.4 states that applications must be submitted on the form prescribed by the Authority, along with supporting documentation. Section 701.5 states that the application filing fee is \$25. Proposed section 701.6 has been withdrawn.

Subchapter B contains rules governing the filing of declarations of historical use, as stated in §701.11. Section 701.12 states that a declaration of historic use is an application for initial regular permit. Section 701.13 states that the historical period for purposes of establishing rights based on historical withdrawals and use of water from the Edwards Aquifer is June 1, 1972 to May 31, 1993, inclusive. Proposed §701.14 has been withdrawn. Section 701.15 states that owners of exempt wells are not required to file an application with respect to those wells. Section 701.16 states that an applicant may seek a permit based on withdrawals by another person if the applicant is the current owner or successor in interest to the well from which water was withdrawn during the historical period. However, incidental de minimis use for nonexempt purposes does not affect this exemption. Section 701.17 states that joint owners must each sign the application individually or through an authorized representative, in which case the application must include written evidence of the authorization. If a well is jointly owned by a husband and wife who wish to file jointly, each must sign the application. Joint applicants must select one of them to represent the others in the application process, and this authorization must also be in writing. Section 701.18 states that a representative can be authorized to file an application for an applicant, but that the application must include written evidence of such authorization.

Section 701.19 makes clear that the application must be filed on or before Monday, December 30, 1996. An application is timely filed if it is actually received by the Authority by that date, or if it is properly mailed and bears an official postmark of no later than that date. A postmark generated by a privately operated postage machine will not satisfy the mailbox rule provided in this section. Proposed §701.20 has been withdrawn.

Section 701.21 lists the types of information that must be provided with the application. Finally, §701.22 states that declarations received by the Authority or the EUWD prior to the effective date of the rules will be considered received as of that date, but that such applicants must file the prescribed application form with the application fee by December 30, 1996. However, an applicant need not resubmit documentation already submitted, if the documentation is identified in the application, unless requested to do so by the general manager. The general manager will not include previously-submitted documentation as a part of the application unless the applicant expressly identifies such documentation in the application.

Summary of Comments and Agency Responses.

Title of the Chapter, Proposed Filing and Processing of Permit Application Rules. One commenter indicated that the title of the chapter is misleading because the processing of a permit application or issuance of a permit is not discussed in the rules. The commenter points out that there is no information on hearings, contested cases or appeal procedures. The commenter points out that in describing interim authorization, the language in the preamble states "until entry of a final and appealable order by the Authority." Again, the rules contain no explanation about final and appealable orders. One must assume the details on processing and issuing permits will be addressed later. The "piecemeal" approach to the permitting process causes uncertainty and confusion.

Agency Response: The comment is well taken by the staff. A piecemeal approach to rulemaking may cause uncertainty and confusion. Unfortunately, development of Chapter 701, relating to the filing and processing of permit applications, required a piecemeal approach. There simply was not adequate time to develop a full review and hearings process on applications for historical use by the time the Authority believed it needed to publish this initial set of rules. The Authority believed it needed to provide notice to existing users as early as possible that December 30, 1996 will be the deadline for filing declarations of historical use. With that goal in mind these rules were developed. The Authority and staff knew at the time of proposal that additional rules would have to be developed to complete most of the sections with regard to the review and hearings on applications for permits. Towards that end staff has presented to the Board for their consideration and possible approval for publication new proposed rules adding new Subchapters C, D, E, F, G and H relating to filing and notices, administrative review of declarations of historical use, technical review and initial determination of declarations of historical use, initial regular permit amounts and terms, hearing process, and post hearings process. The proposed rules will be submitted for public comment and should provide clarification concerning the filing and permitting process.

General. Several commenters pointed out an apparent conflict between the language in the proposal preamble and the Act. The proposal preamble states that an applicant must prove its historical use claim by "clear and convincing evidence." This standard differs from the standard set out in 1.16(d)(2) of the Act which calls for "convincing evidence."

Agency Response: The staff agrees that the term "clear and convincing evidence" may connote a greater burden of proof than does the term "convincing evidence." The language of the preamble is hereby amended to provide that "convincing evidence" is the standard by which an applicant must prove its claim. The staff anticipates that the second set of proposed application filing and processing rules will include guidelines as to what constitutes "convincing evidence."

Users with multiple wells. Two commenters suggested that the preamble should be revised to make clear that a multiple well owner, in particular a large municipal supplier with many wells, should be able to freely transfer withdrawal rights from one well to another. The commenter states that historical rights must be established on a per-well basis, but argues that once the rights are established there should be no requirement that the rights be tied to particular wells.

Agency response: The staff generally agrees with these comments, but does not perceive a need to change the preamble to deal with this issue. Transfer of permit rights will need to be dealt with in future rulemaking.

Statement of statutory authority for Subchapters A and B. One commenter recommended striking "3.03 of the Demand Management Rules previously promulgated by the Edwards Underground Water District, the Authority's predecessor agency" in the Authority's statement of statutory authority for the proposed rules because those rules relate to restriction of water during times of drought based on springflow levels, and are not relevant to historical declarations based on water use levels in the Edwards Aquifer.

Agency Response: The staff agrees that §3.03 of the Demand Management Rules deals with critical period management and is not relevant to filing of declarations of historical use. The reference in the statement of statutory authority to §3.03 of the Demand Management Rules previously promulgated by the Edwards Underground Water District is stricken.

Use most recent year to establish rights based on landscape use. One commenter recommended that, because the nursery business is "a rapidly growing one," that historical use of water for landscape purposes should be based on the most recent year of use, not the 21-year historical period that ended May 31, 1993.

Agency Response: Staff disagrees that a different standard can or should be applied to landscape use under the Act. No change is recommended.

Section 701.1(5) Definitions-EUWD. One commenter suggested striking the definition of "Edwards Underground Water District."

Agency Response: The Edwards Underground Water District is a predecessor agency to the Authority which was abolished by the Act. The reference is retained for clarification purposes.

After further review, staff has made the following changes to the definitions section: The definition of "Act" has been amended to eliminate the reference to the 1995 amendment to the Edwards Aquifer Authority Act, H.B. 3189, in order to make clear that "Act" includes any amendments to the Act. A definition of the key term "existing user" has been added. The definition tracks the definition of the term contained in the Act, and is incorporated here for clarity and ease of reference.

Section 701.4 Form. One commenter recommended that the language which reads "An application should be..." be changed to "An application shall be..."

Agency Response: The staff agrees that §701.4 should read "An application shall be submitted on a form made available for that purpose by the Authority." This clarifies that use of the application form prescribed by the Authority is mandatory.

Section 701.5 Filing Fee. One commenter pointed out that the rule states that cash will be accepted but the application form states that cash will not be accepted.

Agency Response: The staff anticipates that the filing of applications will be performed primarily by mail. In order to avoid the potential of losing cash in the mail, the staff recommends that §701.5 be changed to conform to the language on the ap-



plication form stating that payments may be made by check or money order. However, the general manager has discretion to accept cash and other forms of payment.

**Section 701.6 Categories of Use.** One commenter suggested that this section should be struck because it is not relevant to filing and processing of a permit.

**Agency Response:** The staff agrees that information about current uses of water, which is relevant to critical period management among other issues, is not necessarily indicative of use during the historical period. The staff therefore recommends deletion of this section. Instead, information about current water use should be provided by each permit holder in the annual water use report that must be filed with the Authority by March 1 under §1.32 of the Act.

**Section 701.11 Declarations of Historical Use.** This section was reworded after review by staff because it was contemplated that subchapter B would govern the filing and administrative review of declarations of historical use. However, in order to comply with the technical filing requirements of the Texas Register, the administrative review provisions will appear in new proposed Subchapter D. That subchapter is the subject of a separate rulemaking procedure. Subchapter B as adopted governs only the filing of declarations of historical use.

**Section 701.12 Declaration is An Application.** This section has been reworded after further review by staff to make clear that an application must be filed with the Authority in accordance with chapter 701, Title 31, of the Texas Administrative Code.

**Section 701.13 Historical Period.** This section has been reworded after further review by staff to make clear that only withdrawals from the Edwards Aquifer can qualify for historical use for purposes of obtaining an initial regular permit. Withdrawals of underground water that does not originate from the Edwards Aquifer as defined in the Act does not provide a basis for filing a declaration of historical use.

**Proposed §701.14 Eligibility (proposed but withdrawn).** One commenter contended that this section, which states that in order to be eligible to file an application a person or the person's predecessor must have withdrawn water from a well during the historical period, conflicts with the interim authorization provision of the Act, §1.17, because the latter applies to a user who "owns a producing well that withdraws water from the aquifer" on the "effective date of this article."

**Agency response.** The staff believes that the definition of "eligibility" stated in proposed §701.14 for filing of declarations pursuant to §1.16 of the Act is not in conflict with the interim authorization provision in §1.17 of the Act, although staff recognizes that there is not perfect congruity among all relevant sections of the Act. Under 1.16, initial regular permits are available to persons who can establish withdrawals of water from the Edwards Aquifer during the 21-year historical period of June 1, 1972 through May 31, 1993. A person who withdrew and beneficially used without waste water from the aquifer during the historical period is termed an existing user by the Act. Withdrawals without a permit from nonexempt wells are generally prohibited by 1.15 of the Act.

Section 1.17 of the Act is an exception to this general prohibition. The section provides interim authorization for withdrawals

and beneficial use without waste of water from a nonexempt well for a person who, "on the effective date of this article, owns a producing well that withdraws water from the aquifer..." if the well is in compliance with applicable law and the person timely files a declaration of historical use. The "effective date of this article" is June 28, 1996, the date the Supreme Court dissolved the injunction that had prevented the legislation from becoming effective.

Interim authorization ends on December 30, 1996, the last day for filing declarations of historical use under these rules, unless the person files a declaration of historical use by that date. If a declaration is timely filed, interim authorization continues until a final and appealable order on the person's application for initial regular permit is entered. Because only existing users are entitled to file declarations of historical use, only these persons may continue interim authorization beyond December 30, 1996. In other words, a person who qualifies for interim authorization under 1.17, but who did not withdraw and beneficially use water from the aquifer during the historical period (or who is not a successor in interest to such a person), is not entitled to interim authorization beyond December 30, 1996.

In a few cases, where existing users drilled new or replacement wells between June 1, 1993 and June 28, 1996, they may request special consideration of the circumstances by the board. The Authority is generally empowered to exercise some discretion in individual cases in order to avoid inequity, undue hardship, or taking of private property, and may grant emergency permits to protect human life and safety. Further, the board by rule or order may provide for contractual transfers of interim authorization rights in appropriate circumstances.

Although staff believes that the eligibility section is consistent with the Act, after further review the staff believes that this section is duplicative and should be withdrawn. It is clear in the Act and in other rules that only an existing user can file a declaration of historical use, apply for an initial regular permit, and extend interim authorization beyond the filing deadline. See Adopted 701.16, which was revised to clarify this issue.

**Section 701.15 Exempt Wells .** One commenter recommended that §701.15 should include language about well registrations already filed with the former Edwards Underground Water District. The commenter recommended that the Authority develop a procedure for utilizing well information already filed with the former Edwards Underground Water District and local groundwater conservation districts in Medina and Uvalde Counties.

**Agency Response:** Staff agrees with this comment and amends §701.21 by adding paragraph (12) that requires that the user provide:

A separate Well Information Sheet prescribed by the Authority, or a registration form from a groundwater district or other entity with the same data as the Well Information Sheet, for each of the wells related to the permit, accompanied by a photograph of the well taken approximately 100 feet from the well head.

The requirement of a photograph has been added in order to obtain some evidence that the person owns or possesses the well, and to assist in field identification of the well.

Sections 701.16-701.17 Whether any "user" can file a declaration. A commenter stated that these sections conflict with the



Act to the extent they require an applicant to be the owner of a well. The commenter suggested that any "user" should be able to qualify for a historical withdrawal right.

**Agency Response:** The staff generally agrees that there may be other forms of possessory rights apart from title ownership that could provide the foundation for a historical use claim. However, merely being a "user" of water is not sufficient to support historical withdrawal rights. Under the Act, only an "existing user" is entitled to an initial regular permit. An existing user, according to §1.03(10) of the Act, is "a person who has withdrawn and beneficially used underground water from the aquifer on or before June 1, 1993." This definition necessarily implies that the person in question must have had an underlying legal right to withdraw water from an Edwards Aquifer well. Either that person, or that person's bona fide successor in interest, is eligible to seek a historical right based on that withdrawal. Otherwise, any person who used water from the well during the historical period, regardless of whether they withdrew or had any legal right to withdraw from the well, could claim a historic right to water produced from the well. The staff does not believe that this is consistent with the purpose of the Act. The staff does, however, believe that §701.16 should be reworded to clarify this point. The staff recommends for purposes of clarity that the phrase "bona fide present owner and successor in title to the well" be changed to "current owner or successor in interest to the well." No other changes relating to this comment are recommended.

**Section 701.17 Joint Application.** After further review, the staff has revised this section to conform with a similar provision utilized by the Texas Natural Resource Conservation Commission. The substance of the section remains substantially the same. Joint owners are required to sign the application individually or through an authorized representative. Spouses who jointly own a well and who desire to file a joint application must each sign the application. The rationale for this section is that an initial regular permit should be applied for and issued in the name of all joint owners in order to avoid the uncertainty created by unidentified interest owners. This is especially true of interests that may not be of record, such as community property interests.

**Section 701.19 Time for Filing.** A commenter contended that the filing date should be February 28, 1997, which is six months after the date the Texas Supreme Court issued its mandate on August 31, 1996 in *Barshop v. Medina County Underground Water Conservation District*, sending the case back to the trial court. The filing date stated in the rule is December 30, 1996, six months after the Texas Supreme Court dissolved the trial court injunction that had blocked the Act from taking effect. The staff adheres to the December date, because the Act became fully effective on June 28, 1996, when the injunction was dissolved. The dissolution of the injunction was immediately effective, and was not delayed by subsequent procedural steps in the Supreme Court. The staff recommends against adopting the February date because it is inconsistent with the Legislature's intent to require filing of declarations of historical use six months after the actual effective date of the Act. Adopting the later date would also expose those applicants who would file after December 30, 1996, to litigation attacking the filings as untimely.

The proposed rule called for a filing date of Saturday, December 28, 1996. After further review, the filing date has been changed to Monday, December 30, 1996, because the Authority believes that this date is more consistent with legislative intent and will avoid difficulties for applicants who find themselves needing to file their applications on a Saturday when the offices of the Authority are closed.

**Proposed §701.20 Untimely Declaration (proposed but withdrawn).** After further review, the staff has determined that proposed §701.20 is unnecessary. Because the Act does not allow consideration of any application for Class 2 (additional regular) permit until all Class 1 (initial regular) permit applications are resolved, it is not necessary to prescribe a procedure for applying for Class 2 permits at this time. The section is therefore withdrawn.

**Section 701.21 Information Required in Application .** A commenter generally stated that although an applicant is required to state in an application whether it is a municipal supplier of water, the type of use involved should not affect the historical right or control the authorized use of the such water.

**Agency response:** The staff generally agrees, but no revision to these rules is necessary in response to this comment. The adopted rules govern the procedure for filing of declarations of historical use, not the substantive issue of how type of historical use effects the historical water right or the exercise of the right.

**Section 701.21(6) Information Required in Application Purposes of Use.** One commenter suggested that this subsection should be struck because it is not relevant.

**Agency Response:** Knowing the type of historical use to which the water was applied is relevant because the Authority is required to determine the amount of water the applicant beneficially used without waste during the historical period. This cannot be determined without information concerning the purpose to which the water was applied. However, the staff agrees that information about current uses of water, which is relevant to critical period management among other issues, is not necessarily indicative of use during the historical period. Therefore, the staff recommends changing this section to delete the phrase after the comma that refers to proposed §701.6- Categories of Use, which has been withdrawn.

**Section 701.21(8) Information Required in Application.** One commenter suggested that this section is relevant only to those seeking the maximum amount—not the 2 acrefeet per acre allocation.

**Agency Response:** This comment raises the issue of whether and to what extent a person who seeks to qualify for the 2-acre foot per irrigated acre "irrigation withdrawal floor" under §1.16 of the Act must also provide evidence of maximum annual use during any one calendar year of the historical period. The answer to this question is that all persons applying for initial regular permits must provide convincing evidence of their maximum annual use during any one calendar year of the historical period. However, a person who qualifies for the irrigation withdrawal floor by showing actual irrigation of a specified number of acres during any one calendar year of the historical period has satisfied the required showing of maximum annual use. On the other hand, such a person would be entitled

to show that the maximum annual use was higher than the irrigation permit floor and to seek a permit withdrawal right based on this higher amount, to the extent water is available for permitting under the Act. The irrigator would also be entitled to prove a higher "historical average floor," which is not subject to proportional reduction to meet the amount of water available for permitting.

In response to this comment, proposed paragraph (8) is deleted. Adopted paragraph (8) states the general requirement that applicants provide information concerning their maximum beneficial use of water without waste during any one calendar year of the historical period. Adopted paragraph (6) states the requirement that applicants who seek to qualify for the irrigation withdrawal floor must show the maximum number of acres irrigated during any one calendar year of the historical period. As discussed, for some applicants the same information will satisfy both paragraphs (8) and (6).

**Section 701.21 Information Required in Application.** One commenter indicated that the application form for irrigation use asks for documentation regarding participation in a federal program which may affect historic use (See blue application form 4(F)). However, the commenter complained that there is no proposed rule to insure equitable treatment as specified in §1.16(f) of the Authority's enabling statute.

**Agency Response:** Because the Act requires such a credit, it is not necessary to track this requirement in a rule. However, the staff anticipates that the next group of proposed filing and processing rules will include a rule incorporating the requirement. No change to the rule is recommended based on this comment.

**Section 701.21(11) Transferability of permit rights.** One commenter stated that this paragraph implies that permit rights are transferable, but urged the Authority to include rules that expressly allow the transfer of such rights. The commenter argued that transferability of permit rights is an important right protected by the constitution.

**Agency Response:** The staff agrees that permit rights are generally transferable, subject to the Act's limitation on leasing of permit rights with respect to irrigation use, and such other reasonable restrictions as may be provided by rule. The staff also agrees that the Authority should develop rules to regulate the transfer of permit rights under the Act. However, such rules would not be appropriately placed in chapter 701, which governs the filing and processing of declarations of historical use. The staff anticipates proposing a rule that provides that initial regular permits state that they are assignable and transferable, subject to the Act's limitation on leasing of irrigation water rights and rules of the Authority.

After further review, staff has made the following modifications to adopted §701.21 for purposes of clarity: Paragraph (1) has been reworded to make clear that an authorized representative may file an application for another, but the application must show the basis of the authority. Paragraph (3) has been reworded to add "political subdivision" to clarify that a political subdivision may be an applicant, and to require applicants that are not natural persons to designate a contact person. Language has been added to paragraph (5) to make clear that persons who seek to qualify for the historical average

permit withdrawal floor (average annual use during the historical period) under the last sentence of §1.16(e) of the Act must provide information showing the total amount of water from the Edwards Aquifer that the applicant withdrew and beneficially used without waste during each calendar year of the historical period in which the well was in use. A paragraph has been inserted following paragraph (5). This paragraph (6) in the adopted rules, incorporates the subject matter of paragraph (8) of the proposed rules, but has been reworded to make clear that persons who seek to qualify for an irrigation withdrawal floor under the penultimate sentence of §1.16(e) of the Act must provide documentation of the number of acres actually irrigated during any one calendar year of the historical period. Section 1.16(b) of the Act requires such documentation. Proposed paragraph (9) has been withdrawn because it is duplicative of other requests for information.

**Section 701.22 Declarations Received Prior to Effective Date.** One commenter suggested that this section should be struck because any forms filed prior to December 28, 1996 were not on forms "prescribed by the EAA." In 1993, a number of users filed applications for historical use without using a form prescribed by the authority, in anticipation of the Act's originally intended effective date of September 1, 1993. One commenter was concerned that by recognizing these filings the users would be given an unfair advantage. Another commenter complained that persons would have to resubmit documentation already provided to the Authority or the EUWD.

**Agency Response:** Section 701.22 was proposed to provide those users who have already provided information to the Authority or its predecessor agency with guidance as to what they need to do to comply with the Act's filing requirements. The rule makes clear that prior filers are subject to the general requirement that applicants fill out and file an application form prescribed by the Authority. An attempted application which is not made on the prescribed form is insufficient, regardless of when the attempted application was received by the Authority. The Authority will consider all applications for an initial regular permit on the basis of the information timely provided in support of the application in accordance with the rules, as long as the user has filed a completed application form with the Authority on or before December 30, 1996. There is no advantage given to those who have already provided information.

However, staff believes that the rule should be revised to state that a user who has submitted documentation to the Authority need not resubmit the documentation unless requested by the general manager. Such a user must include a reference in the application form to any documentation previously tendered to the Authority or the EUWD that the applicant wishes to be considered in support of the application. The general manager will not include previously-submitted documentation as a part of the application unless the application expressly calls attention to and identifies the documentation.

## Subchapter A. General Provisions

### 31 TAC §§701.1-701.5

The Authority adopts these rules pursuant to its general and special powers under the Edwards Aquifer Authority Act (the "Act"), Chapter 626, 73rd Legislature, Regular Session, 1993, as amended by chapter 621, 74th Legislature., Regular Ses-

sion, 1995 (the "Act," §§1.08, 1.11, 1.14, 1.15, 1.16, 1.17, 1.26, 1.29, 1.36, 1.37, 1.38, and 1.40 of the Act); and Texas Water Code, Chapter 36.

The adopted sections implement the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14, 1.15, 1.16, 1.17 and 1.35.

*§701.1. Definitions.*

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

Act - The act creating the Edwards Aquifer Authority (Senate Bill 1477, Chapter 626, 73rd Legislature, Regular Session, as amended).

Applicant - A person seeking a permit from the Authority.

Authority Offices - The principal offices of the Edwards Aquifer Authority, located in Bexar County, San Antonio, Texas, 1615 North St. Mary's Street, Post Office Box 15830, 78212.

Declaration - A declaration of historical use as described in the Act, §1.16.

BUWD - The Edwards Underground Water District, the predecessor agency to the Authority which was abolished by the Act.

Person - An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

Existing user - A person who withdrew and beneficially used underground water from the Edwards Aquifer during the historical period.

*§701.4. Form.*

An application shall be submitted on a form made available for that purpose by the Authority. Documentation in support of the application should be attached to the application or submitted together with the application.

*§701.5. Filing Fee.*

(a) The filing fee for an application is \$25. The filing fee must be tendered to the Authority along with the application.

(b) The filing fee may be paid by check, money order or, at the discretion of the general manager, by other form of payment.

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

Issued in Austin, Texas on October 31, 1996.

TRD-9615837

Rick Illgner

General Manager

Edwards Aquifer Authority

Effective date: November 21, 1996

Proposal publication date: September 3, 1996

For further information, please call: (210) 222-2204



Subchapter B. Declarations of Historical Use

31 TAC §§701.11-701.13, 701.15-701.19, 701.21, 701.22

The Authority adopts these new sections pursuant to its general and special powers under the Edwards Aquifer Authority Act (the "Act"), Chapter 626, 73rd Legislature, Regular Session, 1993, as amended by chapter 621, 74th Legislature, Regular Session, 1995 (the "Act," §§1.08, 1.11, 1.14, 1.15, 1.16, 1.17, 1.29, 1.36, 1.37, 1.38, and 1.40 of the Act); and Texas Water Code, Chapter 36.

The adopted sections implement the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14, 1.15, 1.16, 1.17, and 1.35.

*§701.11. Declarations of Historical Use.*

This subchapter governs the filing and administrative review of declarations of historical use.

*§701.12. Declaration is An Application.*

A declaration is an application for initial regular permit, and is to be filed with the Authority in accordance with this chapter.

*§701.13. Historical Period.*

The historical period for purposes of proving historical use of underground water from the Edwards Aquifer qualifying for an initial regular permit is June 1, 1972 through May 31, 1993, inclusive.

*§701.15. Exempt Wells.*

An owner of a well that produces 25,000 gallons of underground water per day or less exclusively for domestic or livestock use is not required to file an application with respect to that well. Incidental de minimis use for non-exempt purposes does not void this exemption.

*§701.16. Applicant.*

An applicant is an existing user and may file an application and apply for an initial regular permit in connection with withdrawal and use of underground water from the Edwards Aquifer during the historical period by another person, if and to the extent the applicant is the current owner or successor in interest to the well from which the underground water was withdrawn during the historical period.

*§701.17. Joint Application.*

A joint application shall be signed by each applicant or each applicant's duly authorized agent, with written evidence of such agency to be submitted with the application. If a well is jointly owned by a husband and wife who wish to file a joint application, each shall sign the application. Joint applicants shall select one among them to act for and represent the others in pursuing the application with the Authority, with written evidence of such representation to be submitted with the application.

*§701.18. Application for Another.*

A person who wishes to file an application and seek an initial regular permit in behalf of the owner of the well(s) upon which the application is based, such as a lessor seeking to perfect a water right in connection with leased land or a trustee or guardian seeking to perfect a water right for a beneficiary or ward, must file a valid power of attorney or other legal documentation with the Authority along with the application that establishes legal authority to file the declaration and seek the permit.

*§701.19. Time for Filing.*

(a) An application must be filed with the Authority by December 30, 1996.

(b) An application is filed with the Authority for purposes of the Act, §1.16(b) (relating to Declarations of Historical Use and Initial Regular Permits) if the application and application fee are:

(1) actually received in the Authority offices by 5:00 p.m. on Monday, December 30, 1996; or

(2) deposited in the United States mail enclosed in a postpaid envelope properly addressed to the Authority, which bears an official postmark date of no later than Monday, December 30, 1996.

**§701.21. Information Required in Application.**

An application must contain the following information to the extent it is available:

(1) The name, address, and telephone number of the applicant and the authorized representative of the applicant, the relationship of the authorized representative to the applicant and evidence showing that the representative is authorized to file the application.

(2) The name, address, and telephone number of the person in whose name the permit is sought to be issued.

(3) If the person in whose name the permit is sought to be issued is a corporation, partnership, or other business entity, the names of the principal owner(s) and officers of the entity.

(4) Facts showing that the applicant is eligible to seek an initial regular permit.

(5) For those persons seeking to qualify for the historical average floor (average annual use during the historical period), the total amount of water from the Edwards Aquifer that the applicant withdrew and beneficially used without waste during each calendar year of the historical period.

(6) For those persons seeking to qualify for the irrigation floor (2 acre feet multiplied by the number of acres actually irrigated during any one calendar year of the historical period), the maximum number of acres irrigated during any one calendar year of the historical period.

(7) The purpose(s) for which the underground water was used during each year of the historical period.

(8) The amount of water the applicant claims as its maximum beneficial use of water without waste during any one calendar year of the historical period.

(9) The number and location of any well the applicant claims was operated during the historical period and the amount of

water withdrawn from that well during each year of the historical period.

(10) Any facts upon which the applicant requests equitable adjustment of the permitted amount because the applicant's historic use was affected by a requirement of or participation in a federal program.

(11) If the water is to be transported, sold, leased, or transferred, a description of how the water will be transported or handled, the name, address, and telephone number of every person to whom the water will be transported, sold, leased, or transferred, the location to which the water will be transported, and the purpose for which the water will be used.

(12) A separate Well Information Sheet prescribed by the Authority or a registration form from a groundwater district or other entity with the same data as the Well Information Sheet, for each of the wells related to the permit, accompanied by a photograph of the well taken approximately 100 feet from the well head.

(13) Any other information that the general manager may require.

**§701.22. Declarations Received Prior to Effective Date.**

Declarations received by the Authority or the EUWD prior to the effective date of these rules will be considered received by the Authority as of that date. Persons filing such declarations must file a completed application form and application fee with the Authority in accordance with §701.4 and §701.18 of this title (relating to Application Forms and Time for Filing of Declarations of Historical Use), but need not resubmit documentation already submitted and identified in the application, unless requested to do so by the General Manager.

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

Issued in Austin, Texas on October 31, 1996.

TRD-9615838

Rick Illgner

General Manager

Edwards Aquifer Authority

Effective date: November 21, 1996

Proposal publication date: September 3, 1996

For further information, please call: (210) 222-2204

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# TABLES & GRAPHICS

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

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

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Figure: 16 TAC 9.183 (g)

**§9.183. Uniform Protection Standards**  
**Table 1**

Requirements	Automatic Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non-Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
Red letters at least 2" high on white or aluminum background: NO SMOKING	*	*	*	*
Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
Letters at least 1/2" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
White letters at least 1" high on red background, including instructions on activation: REMOTE PROPANE EMERGENCY SHUTOFF VALVE	*		*	
Letters at least 4" high on container indicating contents: LP-GAS or BUTANE or PROPANE			*	*
Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*
Letters at least 2" high on operating end of container: WORKING PRESSURE PSIG ____ or WORK PRESS. ____			*	*
Letters at least 2" high on operating end of container: CONTAINER NO. ____ or TANK NO. ____			*	*

# 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

Tuesday, December 3, 1996, 9:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

### AGENDA:

A Prehearing Conference will be held at the above date and time in SOAH DOCKET NUMBER 473-95-1179-PETITION OF LAMB COUNTY ELECTRIC COOPERATIVE, INC., FOR A CEASE AND DESIST ORDER AGAINST SOUTHWESTERN PUBLIC SERVICE COMPANY (PUC DOCKET NUMBER 14454).

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

Filed: November 15, 1996, 3:54 p.m.

TRD-9616697

Thursday, December 11, 1996, 9:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

### AGENDA:

A HEARING ON THE MERITS will be held at the above date and time in SOAH DOCKET NUMBER 473-96-2024; PUC DOCKET NUMBER 15372;-APPLICATION OF GTE SOUTHWEST INC. AND CONTEL OF TEXAS, INC. FOR APPROVAL OF NEW NATIONWIDE ADVANCED CREDIT MANAGEMENT SYSTEM.

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

Filed: November 13, 1996, 12:58 p.m.

TRD-9616438

## Texas Department of Agriculture

Wednesday, December 4, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

### AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1957, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Mayfair Farms, Incorporated.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:28 p.m.

TRD-9616454

Monday, December 9, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

### AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1961, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Francisco Arguillin.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:28 p.m.

TRD-9616455

Monday, December 9, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1962, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Larry W. Echols.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:29 p.m.

TRD-9616456



Tuesday, December 10, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1963, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Rodolfo Martinez, Jr.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:29 p.m.

TRD-9616458



Tuesday, December 10, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1964, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Ruby S. Peters.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:29 p.m.

TRD-9616459



Wednesday, December 11, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1965, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Nuncio Salvaggio.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:30 p.m.

TRD-9616460



Thursday, December 12, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1966, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Genaro Alfaro, Jr.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:29 p.m.

TRD-9616457



Thursday, December 12, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1967, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Cruz and Eguia Farms.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:30 p.m.

TRD-9616461



Friday, December 13, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1968, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Curtis L. Brotzman.



Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:30 p.m.

TRD-9616462



Friday, December 13, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, Docket Number 551-96-1969, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by S&R Farms Joint Venture.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 13, 1996, 4:30 p.m.

TRD-9616463



Monday, December 16, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1970, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Ruben Cantu d/b/a Cantu Farms..

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 15, 1996, 3:10 p.m.

TRD-9616653



Tuesday, December 17, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1972, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Enriqueta Marroquin.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 15, 1996, 3:10 p.m.

TRD-9616652



Tuesday, December 17, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1974, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Tommy B. Lamon.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 15, 1996, 3:10 p.m.

TRD-9616651



Wednesday, December 18, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1973, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Tim Schumann.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 15, 1996, 3:09 p.m.

TRD-9616650



Wednesday, December 18, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1975, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Thomas E. Wiesman.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 15, 1996, 3:09 p.m.

TRD-9616649



Thursday, December 19, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

**AGENDA:**

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1976, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by J&S Farms, Incorporated.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.  
Filed: November 15, 1996, 3:09 p.m.

TRD-9616648



Thursday, December 19, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

**AGENDA:**

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1977, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Warrington Brothers.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.  
Filed: November 15, 1996, 3:07 p.m.

TRD-9616647



Friday, December 20, 1996, 9:00 a.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

**AGENDA:**

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1978, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by May Brothers Farms.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.  
Filed: November 15, 1996, 3:07 p.m.

TRD-9616646



Friday, December 20, 1996, 1:00 p.m.

300 West 15th Street, Suite 502

Austin

State Office of Administrative Hearings

**AGENDA:**

Administrative hearing before the State Office of Administrative Hearings, SOAH Docket Number 551-96-1979, regarding alleged violation of Texas Cotton Pest Control Law contained in Chapter 74 of the Texas Agriculture Code, by Norman Bloomstrom.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 15, 1996, 3:07 p.m.

TRD-9616645



**Texas Commission on Alcohol and Drug Abuse (TCADA)**

Thursday, November 21, 1996, 11:00 a.m.

Delicias restaurant, Highway 281 (approximately 20 miles south of Falfurrias)

Rachal

Regional Advisory Consortium (RAC), Region 11

**AGENDA:**

Call to order; roll call; introduction of visitors; reading and approval of minutes; old business; new business; and adjournment.

Contact: Miguel Lopez, Texas Commission on Alcohol and Drug Abuse, 3804 Casa Blanca Road, Laredo, Texas 78041, (210) 718-0297.

Filed: November 13, 1996, 4:40 p.m.

TRD-9616492



**Texas School for the Blind and Visually Impaired**

Friday, November 15, 1996, 9:00 a.m.

1100 West 45th Street, Room 110

Austin

Board of Trustees, Subcommittee on Policies

**REVISED AGENDA:**

Review and Discussion of Policies on November 15, 1996 agenda:

AA, AB, BA, BAA, BBA, BBA-E, BBC, BE, BE-E-A, BE-E-B, BE-E-C, BE-E-D, BE-E, BEC, BJCD, BJCE, CBA, CBB, CE, CF, CFA, CFCA, CK, CKA, CKAB, CKB, CLE, DAA-R, DBE, DBE-E, DEAA, DEF, DH-R, DHD, DL, EHBE, EI, EIA, EIAB, EIED, EIF, EIF-E, FNCG, FNF, GBBA, GE, GKA

Consideration of Draft of Ethics and Fraud Policy.

Contact: Majorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206-9133.

Filed: November 13, 1996, 11:22 a.m.

TRD-9616429



**Texas Bond Review Board**

Thursday, November 21, 1996, 10:00 a.m.

Clements Building, Committee Room #5, Fifth Floor, 300 West 15th Street

Austin

Planning Session

**AGENDA:**

- I. Call to Order
- II. Approval of Minutes
- III. Consideration of Proposed Issues
  - A. University of North Texas-lease purchase of computer equipment
  - B. Comptroller of Public Accounts-lease purchase of computer equipment
  - C. Veterans Land Board-Texas Veterans' Land Bonds, Taxable Series 1996A
  - D. Texas Tech University-Revenue Financing System Bonds: Third Series (1996); Fourth Series (Taxable 1996)
  - E. Texas Water Development Board-State Revolving Fund Senior Lien Revenue Bonds, Series 1996B
  - G. Texas Water Development Board-General Obligation Bonds: Agricultural Water Conservation Bonds, Taxable Series 1997; Water Development Bonds, Series 1997A, B & C
- IV. Other Business
  - A. Public Utility Commission of Texas-action on request for amendment of payment terms for financing electronic information system
  - B. Veterans Land Board-action on request for extension of approval for issuance of Taxable Land Refunding Bonds
  - C. Texas Department of Housing and Community Affairs-action on request for extension of commercial paper note program and unexpended proceeds refunding program
- V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: November 13, 1996, 2:23 p.m.

TRD-9616445

**Texas Education Agency (TEA)**

Monday, December 2, 1996, 10:00 a.m.

William B. Travis Building, Room 1.104, 1701 Congress Avenue  
Austin

Policy Committee on Public Education

**AGENDA:**

- 1. Call to Order
- 2. Texas Education Agency Plan for Information Management and Communication: Status Report; Information Systems: Department Update
- 3. Open Forum:
  - State Board for Educator Certification: Update
  - Organization Database: Demonstration
  - Information Task Force: Status Report
- Texas Education Agency Data Approval Committee (TEADAC)

Contact: Nancy Vaughn, 1701 N. Congress Avenue, Austin, Texas (512) 463-8110.

Filed: November 18, 1996, 9:36 a.m.

TRD-9616764

**Texas Energy Coordination Council**

Thursday, November 21, 1996, 11:00 a.m.

Capitol Extension, 1200 Congress, Room E1.016  
Austin

**AGENDA:**

- I. Call to Order and Verification of Quorum
  - II. Introductions: Council Members, Staff, Guests
  - III. Consideration and Action on October 18, 1996 Meeting Minutes
  - IV. Discussion and Possible Formal Action on TECC Priorities
  - V. Discussion and Possible Action on the Public Utility Commission Reports: (a) Stranded Costs and (b) Scope of Competition
  - VI. Discussion and Possible Action on the Development of a Set of Energy Research Priorities for the Texas Higher Education Coordinating Board's Advanced Research and Advanced Technology Programs.
  - VII. Executive Director's Report
  - VIII. Institute Reports: Texas Building Energy Institute; Energy Storage Technology Institute
  - IX. Recommendations for Next Agenda
  - X. Confirmation of Next Meeting Date and Site
  - XI. Adjourn
- Contact: Amy Johnston, 10100 Burnet Road, CES (R7100), Austin, Texas 78758, (512) 475-6984.  
Filed: November 13, 1996, 2:25 p.m.  
TRD-9616451

**Texas Ethics Commission**

Friday, November 22, 1996, 9:30 a.m.

1101 Camino La Costa, Room 235

Austin

**AGENDA:**

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the October 11, 1996, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of campaign finance or lobby reports; briefing, discussion, and possible action to waive certain fines assessed for late filing of personal financial statements; discussion and possible action on the adoption of revised lobby rules; discussion and possible action on the adoption of the legislative per diem required to be set under Article III, §24a, of the Texas Constitution, discussion and possible action in

response to the following Advisory Opinion Requests Numbers 387, 388, 389, and SP-6; adjourn.

Contact: Tom Harrison, 1101 Camino La Costa, Austin Texas, (512) 463-5800.

Filed: November 14, 1996, 4:00 p.m.

TRD-9616566

◆ ◆ ◆  
**Texas State Board of Examiners of Perfusionists**

Thursday, November 21, 1996, 10:00 a.m.

Exchange Building, Room N-456, 8407 Wall Street

Austin

Examination Committee

**AGENDA:**

The Committee will discuss and possibly act on: examination contract; and set next meeting date.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Jo Whittenberg, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6751.

Filed: November 13, 1996, 4:34 p.m.

TRD-9616470

◆ ◆ ◆  
Thursday, November 21, 1996, 11:00 a.m.

Exchange Building, Room N-456, 8407 Wall Street

Austin

**AGENDA:**

The board will discuss and possibly act on: approval of minutes from the August 28, 1996, meeting; chairman's report; division director's report; program director's report; examination contract; and will set next meeting date.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Jo Whittenberg, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6751.

Filed: November 13, 1996, 4:34 p.m.

TRD-9616469

◆ ◆ ◆  
**Fire Fighters' Pension Commission**

Thursday-Friday, December 5 and 6, 1996, 1:00 p.m. and 9:00 a.m. respectively

E.O. Thompson Building, 920 Colorado, Fourth Floor, Board Room

Friday, December 6, 1996, 7:30 a.m.

Omni Southpark (Actuary Committee)

Austin

Administrative Division

**AGENDA:**

Discussion and possible action on report from the Plan Consultant, Actuary and Accountant; Review and approval of RFP for Consulting Services; Staff Reports and approval of proposed law changes.

Contact: Commissioner Helen L. Campbell, P.O. Box 12577, Austin, Texas 78711, (512) 936-3372.

Filed: November 15, 1996, 3:15 p.m.

TRD-9616663

◆ ◆ ◆  
**General Services Commission**

Tuesday, November 26, 1996, 9:30 a.m.

Central Services Building, 1711 San Jacinto, Room 402

Austin

**AGENDA:**

(I) Call to Order; (II) Staff, Guests, and Members Present; (III) Approval of Minutes; (IV) Presentation of Awards;

(V) Consideration of the Following Agenda Items: Item 1. Consideration of Proposed Repeal of Texas Surplus Property Agency Rules-1 TAC 141, 143, 145, and 147, Item 2. Consideration of Proposed Amendment to 1 TAC 111.63 regarding Charges for Providing Copies of Public Information, Item 3. Consideration of Proposed Repeal of 1 TAC 119.1 regarding Requests for Information, Item 4. Consideration of withdrawal of proposed amendments to §111.23 concerning Graduation Procedures that were published in the November 19, 1996, issue of the Texas Register, and consideration of proposed new amendments to §111.23 concerning Graduation Procedures, Item 5. Consideration of proposed change orders-various projects, Item 6. Program Issues

(VI) Executive Session to consider personnel matters pursuant to the provisions of the Texas Government Code §551.074;

(VII) Executive Session to consider the status of the purchase of real property pursuant to the provisions of Texas Government Code §551.074;

(VIII) Executive Session to consult with Legal Counsel concerning pending litigation pursuant to the provisions of Texas Government Code §551.074.

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 Stephanie Benoit at (512) 463-3446 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Judy Ponder, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3960.

Filed: November 15, 1996, 4:49 p.m.

TRD-9616718

◆ ◆ ◆  
**Texas Department of Health**

Thursday, November 21, 1996, 8:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health and Clinical Services Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes of the September 12, 1996, meeting; proposed rules concerning Family Planning Advisory Council terms of office; proposed rules concerning documentation requirements, complaint procedures, and educational requirements for midwives; proposed rules concerning immunization requirements for admission of children and students to Texas elementary and secondary schools and institutions of higher education; final adoption of rules concerning definitions, eligibility for client services and payment of services in the Chronically Ill and Disabled Children's Services (CIDC) Program; recognition of the Children's Health Insurance Plan (CHIP) team members; and Title V Futures update.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 13, 1996, 4:35 p.m.

TRD-9616476

◆ ◆ ◆  
Thursday, November 21, 1996, 10:00 a.m.

Tower Building, Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

County Indigent Health Care Program (CIHCP) Advisory Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes from the October 5, 1995, meeting; status of Texas 1115 Medicaid Waiver and managed care roll-out update; public comment; election of chair and vice-chair; director's report (Aid to Families with Dependent Children resource limit change; and fiscal year 1996 state assistance fund); federal welfare reform; schedule of future meetings and suggested agenda items.

For ADA assistance, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Jane Jaggar, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 338-6470.

Filed: November 13, 1996, 4:31 p.m.

TRD-9616467

◆ ◆ ◆  
Thursday, November 21, 1996, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health Financing Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes of the October 24, 1996, meeting; proposed repeal and new rules concerning Kidney Health Care; recommendation to the State Medicaid Director concerning proposed rules regarding Medicaid Home Health Services; adoption of rules concerning standards for Managed Care Organizations participating in the Medicaid Program; and Kidney Health Care Advisory Committee annual report.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 13, 1996, 4:34 p.m.

TRD-9616471

◆ ◆ ◆  
Thursday, November 21, 1996, 11:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

**AGENDA:**

The Board of Health will have a Luncheon with the American Cancer Society.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 13, 1996, 4:34 p.m.

TRD-9616472

◆ ◆ ◆  
Thursday, November 21, 1996, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Strategic Management Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes of the October 24, 1996, meeting; Office of Border Health update; federal update (welfare reform implementation); monthly financial report (Historically Underutilized Business; contract leverage team implementation; new laboratory; and monthly financial update); and report on HIV/STD contracts.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 13, 1996, 4:34 p.m.

TRD-9616473

◆ ◆ ◆  
Thursday, November 21, 1996, 2:30 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Regulatory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the October 24, 1996, meeting; proposed rules concerning (licensure of medical physicists; certification of respiratory care practitioners; and meat and poultry inspection).

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 13, 1996, 4:35 p.m.

TRD-9616474

◆ ◆ ◆  
Thursday, November 21, 1996, 3:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Board Briefing

AGENDA:

The board will receive a briefing on proposed legislation. This briefing will be a continuation of the Board Briefing held at 3:00 p.m., Wednesday, November 20, 1996, and will take place only if necessary.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 13, 1996, 4:35 p.m.

TRD-9616475

◆ ◆ ◆  
Friday, November 22, 1996, 8:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Board Briefing

AGENDA:

The board will receive a briefing by the commissioner on the current activities of the Texas Department of Health. Also, a discussion will be held concerning procedural and/or administrative issues of the Board of Health.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 14, 1996, 4:04 p.m.

TRD-9616574

◆ ◆ ◆  
Friday, November 22, 1996, 9:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Human Resources Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the October 24, 1996, meeting; appointment to the Oral Health Services Advisory Committee; appointments to the Children with Special Health Care Needs Advisory Committee; TDH/9-1-1 Commission Partnership Proposal appointments; proposed rules concerning abolition of the Children's Speech-Language and Hearing Advisory Committee; briefing on the Family Planning Division; report on complaints and grievances (policies, procedures, and training); and litigation report.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: November 14, 1996, 4:03 p.m.

TRD-9616570

◆ ◆ ◆  
Friday, November 22, 1996, 10:00 a.m.

Exchange Building, Room N-320, 8407 Wall Street

Austin

Texas Hazard Communication Act Advisory Committee (THCA)

AGENDA:

The committee will introduce new committee members and discuss and possibly act on: enforcement policies; viewing Risk Communication video tape; training standards for inspectors; draft of proposed amendments to 25 TAC §§295.1-295.8 concerning rules for Hazard Communication; schedule fiscal year 1996-1997 meetings; comments and announcements; and will receive public comments.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Roxanne Cuellar, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6603.

Filed: November 14, 1996, 4:03 p.m.

TRD-9616573

◆ ◆ ◆  
Friday, November 22, 1996, 11:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The Board of Health will have a Luncheon with the State budget government staff.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6603.

Filed: November 14, 1996, 4:03 p.m.

TRD-9616571

◆ ◆ ◆  
Friday, November 22, 1996, 1:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The board will meet in open session to introduce guests and discuss and possibly act on: approval of the minutes of the October 25, 1996, Texas Board of Health meeting; commissioner's report; resolutions; presentation of Moment of Truth Awards; Strategic Management Committee Report; Health Financing Committee Report (proposed repeal and new rules concerning Kidney Health Care; recommendation to the State Medicaid Director concerning proposed rules regarding Medicaid Home Health Services; and adoption of rules concerning standards for Managed Care Organizations participating in the Medicaid Program); Health and Clinical Services Committee Report (proposed rules concerning Family Planning Advisory Council terms of office; proposed rules concerning documentation requirements, complaint procedures, and educational requirements for midwives; proposed rules concerning immunization requirements for admission of children and students to Texas elementary and secondary schools and institutions of higher education; adoption of rules concerning definitions, eligibility for client services and payment of services in the Chronically Ill and Disabled Children's Services (CIDC) Program; and recognition of the Children's Health Insurance Plan (CHIP) team members); Human Resources Committee Report (appointments to the Oral Health Services Advisory Committee; appointments to the Children with Special Health Care Needs Advisory Committee; TDH/9-1-1 Commission Partnership Proposal appointments; and proposed rules concerning abolition of the Children's Speech-Language and Hearing Advisory Committee); Regulatory Committee Report (pro-

posed rules concerning licensure of medical physicists; certification of respiratory car practitioners; and meat and poultry inspection); public comments; announcements and comments; and set meeting date for January, 1997. The board will meet in executive session to discuss pending litigation (Texas Pharmacy Association et al vs. Texas Department of Health concerning reimbursement rates for pharmacy services in the Medicaid Vendor Drug Program; and Texas Department of Health vs. A to Z Women's Services, Houston et al).

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6603.

Filed: November 14, 1996, 4:03 p.m.

TRD-9616572

◆ ◆ ◆  
**Texas Health Care Information Council (THCIC)**

Monday, November 25, 1996, 9:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will meet in open session and will discuss and possibly act on: approval of the minutes of the October 27, 1996 and October 28, 1996 council meeting; committee reports (Hospital Discharge Data Committee, Public Health Committee, Non-Hospital Data/Expanded Information Plan Committee; and Consumer Education Committee); public hearing on proposed rules for collection of Health Plan Employer Data and Information Set (HEDIS) from Health Maintenance Organizations published in the Texas Register on October 15, 1996; proposed rules for the collection and release of hospital discharge data published in the Texas Register on August 23, 1996; draft of report to the Texas Legislature by the THCIC relating to Consolidation of State Public Health Data Collection Programs prepared under contract by the University of Texas School of Public Health; development of an interagency contract with the Census Data Center, Texas A&M University, to determine which hospitals within the State of Texas qualify as rural providers under Chapter 108 of the Health and Safety Code; development of a public relations (media) plan for THCIC; development of a plan for (conducting surveys of consumers of health care and consumers of health care information for THCIC; and setting up quarterly meetings between stakeholders and members of the THCIC); review last year's balanced budget; and administrative and operational issues. The council will then meet in executive session to meet with legal counsel to seek legal advice, pursuant to Texas Government Code, §551.071 regarding pending or contemplated litigation, settlement offers and employment law and personnel matters relating to the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of the Executive Director and/or Administrative Technician. The council will then return to open session to discuss and possibly act on: the legal advice provided in the immediate prior executive session. The council will return to executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline or dismissal

of the Executive Director and/or Administrative Technician, and/or to hear complaints or charges against the Executive Director and/or Administrative Technician, and/or to hear complaints or charges against the Executive Director and/or Administrative Technician, pursuant to Texas Government Code §551.074. The council will meet in open session to discuss and possibly act on: appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director and/or Administrative Technician, pursuant to Texas government Code, §551.074. The council will return to executive session to consider the appointment, employment, and duties of an Acting Executive Director, pursuant to Texas Government Code, §551.074. The council will return to open session to discuss and possibly act on: appointment, employment and duties of an Acting Executive Director, pursuant to the Texas Government Code, §551.074; and public comments.

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Craig A. Jimerfield, 1100 West 49th Street, Austin, Texas 78756, (512) 424-6490.

Filed: November 15, 1996, 4:51 p.m.

TRD-9616725

## Texas Department of Information Resources

Thursday, November 21, 1996, 9:30

William P. Clements Building, 300 West 15th Street, Fifth Floor, Committee Room 2

Austin

Board

### EMERGENCY REVISED AGENDA:

Call to Order, Roll Call and Witness Registration

1. Adoption of August 22, 1996 Meeting Minutes
2. Adoption of September 18-20, 1996 Meeting Minutes
3. Authorize the Executive Director to Request Financing From the Texas Public Finance Authority
4. Update on West Texas Disaster Recovery Operation Center
5. Presentation Regarding the Legislative Process
6. Presentation of Requirements for Information Resource Managers Continuing Education Program
7. Presentation of Quality Assurance Team Report
8. Executive Director's Report
9. Consideration of Annual Financial Report
10. Other Business

Continued Discussion of Strategic Planning Process from September 18-20 Board Meeting

Reason for emergency: A reasonably unforeseeable situation occurred in that the meeting room was inadvertently double-booked so the meeting location changed.

Contact: Martha Zottarelli, 300 West 15th, Suite 1300, Austin, Texas, (512) 475-2153.

Filed: November 14, 1996, 4:00 p.m.

TRD-9616565

## Texas Juvenile Probation Commission

Friday, November 22, 1996, 11:00 a.m.

Double Tree, De Zavala Room, 6505 North IH 35

Austin

Budget Committee Report

### AGENDA:

Call to order; excuse absences; discussion and possible action on the Medicaid Pilot Project; discussion and possible action, on the Memorandum of Understanding between TJPC and the Texas Department of Health; discussion and possible action on the Contract between TJPC and DHS; hear public comment; and adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 424-6682.

Filed: November 14, 1996, 10:11 a.m.

TRD-9616504

Friday, November 22, 1996, 11:30 a.m.

Double Tree, De Zavala Room, 6505 North IH 35

Austin

Internal Audit Committee

### AGENDA:

Call to order; excuse absences; discussion and possible approval of TJPC's Internal Audit Plan and Risk Assessment for FY 97; public comment, and adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 424-6682.

Filed: November 14, 1996, 10:13 a.m.

TRD-9616505

Friday, November 22, 1996, 1:00 p.m.

Double Tree, De Zavala Room, 6505 North IH 35

Austin

Evaluation Committee

### AGENDA:

Call to order; excuse absences; Closed executive Session-(This meeting is closed to the public as authorized by the Texas Open Meetings Act as codified in §551.074 of the Texas Government Code); Discussion and Possible action on the evaluation and duties of the executive director. Resume. Open meeting-take any final action, decision or vote of matters deliberated in the closed meeting by the Evaluation Committee meeting; public comment; adjourn.



Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 424-6682.

Filed: November 14, 1996, 10:13 a.m.

TRD-9616506

Friday, November 22, 1996, 1:30 p.m.

Double Tree, De Zavala Room, 6505 North IH 35

Austin

Board Meeting

AGENDA:

Call to order; excuse absences; approval of minutes; adoption of legislative agenda; Budget Committee Report-discussion and possible action on the Medicaid Pilot Project; discussion and possible action on the Memorandum of Understanding between TJPC and the Texas Department of Health; discussion and possible action on the Contract between TJPC and DHS; Internal Audit Committee Report-Discussion and approval of TJPC's Internal Audit Plan and Risk Assessment for FY 97; discussion and possible adoption of the amendments to the Texas Juvenile Probation Standards; TJPC Interagency Activities-TJPC/DPRS Joint Task Force Update, SOCC Texas A&M Extension Prevention Project, Senate Bill 1 Update, Buffalo Soldiers' Program Update, Update on Request from Bluebonnet Improvement Group; Evaluation Committee Report-Closed Executive Session (This meeting is closed to the public as authorized by the Texas Open Meetings Act as codified in §551.074 of the Texas Government Code) discussion and possible action on the evaluation and duties of TJPC's executive director. Resume Open Meeting-take any final action on the evaluation and duties of TJPC's executive director; Director's Report; Public Comments; Adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 424-6682.

Filed: November 14, 1996, 10:14 a.m.

TRD-9616507

## Board of Law Examiners

Saturday and Sunday, November 23 and 24, 1996, 8:30 a.m.

Tom C. Clark, 205 West 14th Street, Suite 500

Austin

AGENDA:

The Board will call to order and consider: requests for excused absences; approval of minutes, financial and investment reports; conduct character and fitness hearings (in executive session); review bar examination questions (in executive session); consider adoption of certain policies and procedures; consideration implementation of MPT; consider reports from staff and board members; special requests for waivers and interpretations; proposal to eliminate Rule II(a)(5), Rules Governing Admission to the Bar of Texas; consult with legal counsel concerning pending litigation (in executive session); and hear communications from the public.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: November 13, 1996, 11:25 a.m.

TRD-9616431

## Texas State Board of Medical Examiners

Thursday, Friday, and Saturday, November 14-16, 1996, 9:00 a.m., 4:00 p.m., and 8:30 a.m. respectively

333 Guadalupe, Tower 2, Suite 225

Austin

EMERGENCY REVISED AGENDA:

In addition to previously posted agenda, the following have been added: approval of additional disciplinary orders.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016 and fax (512) 305-7008.

Filed: November 13, 1996, 4:37 p.m.

TRD-9616485

Wednesday, November 20, 1996, 9:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

EMERGENCY AGENDA:

Probation Appearance, 9:00 a.m.-Floyd L. House, MD, Brownsville, Texas

Probation Appearance, 9:00 a.m.-Joseph J. Martinez-O'Hara, MD, Brownsville, Texas

Probation Appearance, 9:00 a.m.-Robert A. Manion, MD, Corpus Christi, Texas

Probation Appearance, 9:00 a.m.-Dennis A. Uldrich, MD, San Antonio, Texas

Probation Appearance, 9:00 a.m.-Ira M. Levin, MD, Austin, Texas

Probation Appearance, 10:00 a.m.-James L. Kirkpatrick, MD, Lubbock, Texas

Probation Appearance, 10:00 a.m.-Weldon F. Butler, MD, Odessa, Texas

Termination Request, 10:00 a.m.-Weldon E. Glidden, DO, Quanah, Texas

Termination Request, 11:15 a.m.-Daniel H. Bolin, MD, Wichita Falls, Texas

Termination Request, 11:45 a.m.-Douglas R. Mailman, MD, Lubbock, Texas

Modification Request, 11:00 a.m.-Art G. Smith, MD, Big Spring, Texas

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768-2018, (512) 305-7016 and fax (512) 305-7008.

Filed: November 13, 1996, 11:27 a.m.

TRD-9616435

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**Texas National Guard Armory Board**

Monday, November 25, 1996, 10:30 a.m.

2200 West 35th Street, Building 64,

Austin

Subcommittee-External Auditor

**AGENDA:**

**Subcommittee Meeting-Compliance Audit Review**

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Julie Wright at least three days prior to the meeting so that arrangements can be made.

Contact: Julie Wright, 2200 West 35th Street, Building 64, Austin, Texas 78703, (512) 406-6971.

Filed: November 14, 1996, 9:25 a.m.

TRD-9616493

◆ ◆ ◆  
**Texas Natural Resource Conservation Commission**

Friday, November 22, 1996, 9:30 a.m.

12000 Park 35 Circle, IH35, Building E, Room 201-S

Austin

Water Well Drillers Advisory Council

**EMERGENCY MEETING AGENDA:**

The Texas Water Well Drillers Advisory Council will meet and discuss the following: approval of minutes of the September 20, 1996 meeting, set the following for a formal hearing or take appropriate legal action against, Alan Dreyer, Thomas Braendle, Gordon Bruce, Steve Carroll, John Duran, James Fleck, Lonnie Gray, Mark Jordan, Wayne Hood, Ted Kneten, Jimmy Odom, Henry Sawatsky, Davis Seargeant and certification of applicants for registration and driller-trainee; and staff reports.

**REASON FOR EMERGENCY:** The meeting was called by the Water Well Driller Advisory Council Chairman.

Contact: Rick Wilder, Occupational Certification Section, TNRCC, 12000 Park 35 Circle, IH35, Austin, Texas (512) 239-0541.

Filed: November 15, 1996, 9:10 a.m.

TRD-9616604

◆ ◆ ◆  
Monday, November 25, 1996, 2:00 p.m.

Room 201S, Building E, 12118 North IH35

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 Commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas (512) 239-3317

Filed: November 15, 1996, 3:31 p.m.

TRD-9616693

◆ ◆ ◆  
Tuesday, December 3, 1996, 3:00 p.m.

City of McAllen Parks and Recreation, La Placita, 1000 South Ware Road

McAllen

**AGENDA:**

For an informal public meeting regarding the application of Mr. Howard Adams (The Grease Specialist). Proposed Permit Number MSW2258, to authorize construction and operation of a Type VGG (Grease and Grit Trap) municipal solid waste management facility. The proposed site covers about 1.1 acres of land, and is located on Western Avenue, about 3.5 miles north of Farm to Market Road 2221, near Citrus City, in Hidalgo County, Texas.

Contact: Charles Stavelly or Ann Scudday, TNRCC, P.O. Box 13087, Mail Code 176, Austin, Texas 78701, (512) 239-6688.

Filed: November 14, 1996, 2:43 p.m.

TRD-9616554

◆ ◆ ◆  
Friday, December 6, 1996, 9:00 a.m.

12100 Park 35 Circle, Building B, Room 201A

Austin

**AGENDA:**

The Texas Natural Resource Conservation Commission has referred the enforcement case on VETROTEX CERTAINTTEED CORPORATION, A WHOLLY-OWNED SUBSIDIARY OF THE SAINT-GOBAIN CORPORATION to the State Office of Administrative Hearings (SOAH). SOAH has scheduled a public hearing on the assessment of administrative penalties and requiring certain actions of Vetrotex Certainteed Corporation, a Wholly-owned Subsidiary of the Saint-Gobain Corporation, SOAH Docket No. 582-96-2064.

Contact: Pablo Carrasquillo, SOAH Docket Clerk, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-3445.

Filed: November 15, 1996, 9:02 a.m.

TRD-9616601

◆ ◆ ◆  
Wednesday, December 18, 1996, 10:00 a.m.

City Recreation Building, City Park

San Marcos

State Office of Administrative Hearings

**AGENDA:**

Notice of public hearing before an administrative law judge of the State Office of Administrative Hearings on an application by TEXAS

**PARKS AND WILDLIFE DEPARTMENT** for a proposed Water Quality Permit No. 03881. This permit would authorize a discharge of process wastewater (including pond and raceway effluent) at a volume not to exceed an average flow of 2,700,000 gallons per day. The applicant operates the A.E. Wood State Fish Hatchery. The facility is adjacent to Farm to Market Road 621, about one mile east of the intersection of FM Road 621 and State Highway 123 in the City of San Marcos, Hays County, Texas.

Contact: Pablo Carrasquillo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711, (512) 475-4993.

Filed: November 15, 1996, 9:09 a.m.

TRD-9616603

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**Texas Board of Nursing Facility Administrators**

Thursday, November 21, 1996, 8:00 a.m.

Moreton Building, Room M-652, Texas Department of Health, 1100 West 49th Street

Austin

Complaints Committee

**AGENDA:**

The committee will discuss and possible act on: comments received on the proposed and emergency rules 22 TAC §§241.19-241.20 as published in the October 29, 1996, issue, 21 TexReg 10645 and 10653; and complaints (95-NFA-00191; 96-NFA-00137; 96-NFA-00155; 96-NFA-00156; 96-NFA-00159; 96-NFA-00164; 96-NFA-00179; 96-NFA-00186; 96-NFA-00211; 96-NFA-00231; 96-NFA-00252; 96-NFA-00254; 96-NFA-00265; 96-NFA-00274; 96-NFA-00275; 96-NFA-00276; 96-NFA-00277; 96-NFA-00278; 96-NFA-00279; 96-NFA-00280; 96-NFA-00281; 96-NFA-00282; 96-NFA-00283; 96-NFA-00073; and 96-NFA-00074).

To request an accommodation under the ADA, please contact Lonzo Kerr, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or T.D.D at (512) 458-7708 at least two days prior to the meeting.

Contact: Bobby Lane, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6787.

Filed: November 13, 1996, 4:32 p.m.

TRD-9616468

◆ ◆ ◆  
**Texas Optometry Board**

Thursday and Friday, November 21 and 22, 1996, 10:30 a.m. and 9:00 a.m. respectively

Board Office, 333 Guadalupe, Suite 2-420

Austin

All Committees (Thursday) and Board (Friday)

**AGENDA:**

Consider reports of Secretary-Treasurer, legal counsel, executive director, committee chairpersons, conference attendees; consider matters involving Health Professions Council; public comment time certain of 10:00 a.m.; Report on CLEAR meeting in Anchorage in

October; Report on CLEAR Symposium in November in Austin; consider A.G. Opinion DM-416 re: Board rule regarding use of cocaine eye drops by therapeutic optometrists; consider A.G. Opinion Request 884 regarding scope of practice issues, if received; FTC Settlement Agreement/Eyeglass Rule I; Budget and Legislative report; Executive Session to be held in compliance with 551.071 of the Government Code to discuss contemplated and pending litigation with Board attorney and matters referred to Attorney General; consideration and possible vote on matters discussed in Executive Session.

Contact: Lois Ewald, Texas Optometry Board, 333 Guadalupe, Suite 2-240, Austin, Texas, (512) 305-8500.

Filed: November 13, 1996, 11:25 a.m.

TRD-9616432

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**Texas Department of Protective and Regulatory Services**

Thursday, November 21, 1996, 10:30 a.m.

Winters Complex, 701 West 51st, Public Hearing Room, 125-E

Austin

Board

**AGENDA:**

1. Call to order. 2. Reading, Correction and Approval of Minutes of September 27, 1996. 3. Excused Absence. 4. Public Testimony. 5. Report by Chairman. 6. Report by Executive Director. 7. Recognition of Harris County CPS Fund Board. 8. Staff Reports. a. Budget/Finance. b. Child and Adult Protective System (CAPS). c. Legislative Report. d. Child Care Licensing. e. Work Session Presentation for Rule Changes Regarding CPS Handbook, Section 7000, Foster and Adoptive Home Development. 9. Old Business. a. Final Adoption of Rule Change to Permit PRS to Use Federal Dollar Limits for Purposes of Requiring a Contractor to Capitalize Equipment and for the Purpose of Defining "Equipment". b. Consultant's Report on Comments Regarding Cost Benefit and Economic Impact of Standards for Child Care Facilities. Staff response as appropriate. 10. New Business a. Recommendations from Youth Advisory Committee. B.Consideration and Approval to Publish Rules Concerning Confidentiality and the Release of Child Protective Services Records. 11. Adjourn.

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-654, Austin, Texas 78714-9030, (512) 438-4435.

Filed: November 13, 1996, 4:39 p.m.

TRD-9616489

◆ ◆ ◆  
**Public Utility Commission of Texas**

Monday, December 2, 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. 16647- Application of LocalCom,

Inc. for a Service Provider Certificate of Operating Authority. Applicant will provide any or all of the telecommunications services that are or will be available through the incumbent local exchange carriers or other certificated carriers. Applicant plans to resell local exchange services including tone dialing, Caller ID, toll restriction, custom calling features, and any other services which are or become available. Applicant's initial intention is to resell any available services within the area that exactly follows the boundaries of Southwestern Bell Telephone Company and GTE of the Southwest, Inc. Additional, applicant plans to expand its operations to include the entire state of Texas and follow exactly the service area of any other eligible local exchange carrier within the state of Texas. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by November 27, 1996.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7145.

Filed: November 15, 1996, 3:11 p.m.

TRD-9616658

### Railroad Commission of Texas

Monday, November 25, 1996, 9:00 a.m.

1701 North Congress, 12th Floor Conference Room 12-126

Austin

#### AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact Kathy Way, Oil & Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729

Filed: November 15, 1996, 4:51 p.m.

TRD-9616726

Tuesday, November 26, 1996, 9:30 a.m.

1701 North Congress, 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, (512) 463-7033

Filed: November 15, 1996, 4:51 p.m.

TRD-9616727

### Texas Senate

Monday, November 18, 1996, 8:30 a.m.

3500 Camp Bowie Boulevard, University of North Texas Health Science Center, Medical Education Building

Forth Worth

Administration Committee, Subcommittee 1

#### AGENDA:

To consider the following: Issues relating to the July 11, 1996, charge to Subcommittee 1.

Other Business

Contact: Myra Schmitt, State Administration Committee, P.O. Box 12068, Austin, Texas 78711, (512) 463-0350

Filed: November 13, 1996, 11:28 a.m.

TRD-9616436

### Teacher Retirement System of Texas

Thursday, November 21, 1996, 1:30 p.m.

1000 Red River, Room 514

Austin

Board of Trustees Policy Committee

#### AGENDA:

1. Approval of Minutes of July 26, 1996, and September 26, 1996, Meetings
2. Consideration of Proposed Changes to TRS Investment Policy and Soft Dollar Policy
3. Discussion of the Securities Lending Policy
4. Consideration of Annual Policy Plan

For ADA assistance, contact John R. Mercer (512) 397-6418 or T.D.D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6418.

Filed: November 13, 1996, 4:36 p.m.

TRD-9616483

Thursday, November 21, 1996, 3:30 p.m.

1000 Red River, Room 229E

Austin

Board of Trustees Benefit Committee

#### AGENDA:

1. Approval of Minutes of October 24, 1996, Meeting
2. Consideration of Committee Charter-Mr. Whittenburg

3. Preliminary Discussion of Benefits Reengineering Proposals-Mrs. Koontz

For ADA assistance, contact Mary Godzik (512) 397-6418 or T.D.D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6418.

Filed: November 13, 1996, 4:36 p.m.

TRD-9616484

◆ ◆ ◆  
Friday, November 22, 1996, 8:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of Minutes of November 11, 1996, Meeting
2. Consider Strategic Consultant Responses to Request for Offer and Select Consultant
3. Consideration of Proposed Sale of TRST Congress, Inc. Property
4. Discussion of Loan Modification Process
5. Update on Mortgage Risk Ratings

For ADA assistance, contact John R. Mercer (512) 397-6418 or T.D.D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6418.

Filed: November 14, 1996, 3:59 p.m.

TRD-9616563

◆ ◆ ◆  
Friday, November 22, 1996, 10:00 a.m.

1000 Red River, Fifth Floor Boardroom

Austin

Board of Trustees

AGENDA:

1. Roll Call of Board Members
2. Public Comments
3. Approval of Minutes of September 27, 1996, and October 25, 1996, Meetings
4. Report of Benefits Committee-Mr. Whittenburg
5. Report of Policy Committee and Consideration of Changes to the Investment Policy and Soft Dollar Policy-Dr. Stream
6. Consideration of Exception to Strategy and Policies Which Require Property Held by TRST Congress, Inc. to be Publicly Marketed-Mrs. Dotter
7. Report on Historically Underutilized Business Utilization-Mr. Jung

8. Report on Legislative Matters-Mr. Dunlap

9. Status Report and Consideration of Procedures for Award of Member Enrollment and Reporting Improvement and Transformation Project-Mrs. Koontz

10. Report on Disability Excess Earnings Procedures-Mrs. Koontz

11. Report of Chief Financial Officer on the Status of PAM Implementation and Securities Lending Procedures-Mr. Jung

12. Consideration of Changes to Investment Counsel Contract with Wellington-Mr. Baker

13. Consideration of Reopening and Extending Period for Fiduciary Counsel Proposals-Mr. Baker

14. Consideration of AG Opinion DM-417 Regarding Driver Education Compensation-Mr. Baker

15. Consideration of Resolution on Designation of Partners for Nominee Name Partnership for Investment Securities-Mr. Baker

16. Report of Executive Director-Mr. Dunlap

17. Comments by Board Members

For ADA assistance, contact John R. Mercer (512) 397-6418 or T.D.D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6418.

Filed: November 14, 1996, 4:01 p.m.

TRD-9616568

◆ ◆ ◆  
**Telecommunications Infrastructure Fund Board**

Friday, November 22, 1996, 9:30 a.m.

221 East 11th Street, Conference Room

Austin

Finance and Audit Committee

EMERGENCY AGENDA:

I. Call Committee Meeting to Order/Quorum Call, Chairman Roger Benavides

II. Discussion of Standard formats for Monthly Financial Reports

A. Timing and Format of Reports

B. Agency Funds and Expenditures

C. TIF Funds Collected and Available

III. Discussion of Methods, Timing and Documentation Requirements for Distribution of Funds on RFPs

A. Contracts

B. Other

IV. Other Items, as Necessary

V. Future Agenda Items

VI. Adjourn Committee Meeting

REASON FOR EMERGENCY: To discuss grant disbursements, also to finalize grant disbursement procedures.

Contact: Rhonda Hill, P.O. Box 12428, Austin, Texas 78701, (512) 936-8432.

Filed: November 15, 1996, 4:49 p.m.

TRD-9616712

◆ ◆ ◆  
**The Texas A&M University System**

Tuesday, November 19, 1996, 10:00 a.m.

Board of Regents Meeting Room, MSC Annex, Clark Street

College Station

Board of Regents

AGENDA:

The purpose of this special telephonic meeting is to delegate authority to the CEOs of the component institutions of The Texas A&M University System to hold public hearings on the increase of general use fees.

Contact: Vicki Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 15, 1996, 9:08 a.m.

TRD-9616602

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**Texas State Technical College System**

Friday, November 22, 1996, 9:00 a.m.

Texas State Technical College System Conference Room, 3801 Campus Drive

Waco

Board of Regents Search Committee

AGENDA:

The Board of Regents will discuss and act on the following Minute Orders: Recommendations, if any, to the full Board of Regents regarding Search Committee Meeting.

Contact: Sandra Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: November 18, 1996, 9:45 a.m.

TRD-9616767

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Friday, November 22, 1996, 9:05 a.m.

Texas State Technical College System Conference Room, 3801 Campus Drive

Waco

Board of Regents Search Committee

AGENDA:

Following Item III of the agenda and shown as Item IV, the Board of Regents will recess from open meeting into Closed Meeting in accordance with Chapter 551 of the Texas Government Code for the

specific purpose provided for in sections 551.074, 551.075 and will discuss the following: Discuss Chancellor search process and review applications for the position.

Contact: Sandra Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: November 18, 1996, 9:45 a.m.

TRD-9616768

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Friday, November 22, 1996, 12:30 p.m.

TSTC Waco, Women's Resource Center, 3801 Campus Drive

Waco

Board of Regents

AGENDA:

Discussion and Review of the following TSTC Policy Committee Minute Orders and Reports:

Committee of the Whole — 12:30 p.m.

Policy Committee for Instruction & Student Services — 12:35 p.m.

Policy Committee for Human Resources & Development — 1:00 p.m.

Policy Committee for Facilities — 1:30 p.m.

Policy Committee for Fiscal Affairs — 2:30 p.m.

Committee of the Whole — 3:30 p.m.

Contact: Sandra Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890

Filed: November 14, 1996, 4:48 p.m.

TRD-9616576

◆ ◆ ◆  
Saturday, November 23, 1996, 8:00 a.m.

TSTC Waco, Women's Resource Center, 3801 Campus Drive

Waco

Board of Regents

AGENDA:

The Board of Regents will discuss and act on the following Minute Orders:

Active Student/Employee Organization Purpose Statements, Policy for Investments, Requests for Budget Change, Signature Authorizations, Lease Agreement with Fraser Industries, Inc. and A & K Foam and Packaging at Amarillo, Lease with Central Texas Economic Development District at Waco, Lease Agreement with the Rolling Plains Technical Foundation for Housing at Avenger Village at Sweetwater, Private Room Fee for Students Living in on-campus housing at Sweetwaters, Amendment to Waco's Master Plan, Reinstatement and renovation of 26 housing units at Waco, Easement for electrical Power Supply to Central Power and Light Company at Harlingen, Award a contract for Construction of a Parking Lot at Harlingen, Official Designation of the Eddie Lucio, Jr. Health Science Technology Building at Harlingen, Resolution of Appreciation for Julian K. Wailes, approval of revised bylaws for TSTC Board of Regents and approval of Legislative Agenda.

Contact: Sandra Krumnow, 3801 Campus Drive, Waco, Texas 76705,  
(817) 867-3964  
Filed: November 14, 1996, 4:50 p.m.

TRD-9616578

◆ ◆ ◆  
Saturday, November 23, 1996, 8:15 a.m.

TSTC Waco, Women's Resource Center, 3801 Campus Drive  
Waco

Board of Regents

AGENDA:

Closed meeting for the specific purpose provided in Sections 551.071, 551.074 and 551.075 of Chapter 551 of the Texas Government Code, Section 551.071: Maria Christina Lucio vs. TSTC, Truett W. Bates vs. TSTC, Al Ragusin dba Action Landscaping and Land Maintenance vs. TSTC, and asbestos litigation; Section 551.074; Discuss findings of the Search Committee, Discuss TSTC System personnel/foundation issues.

Contact: Sandra Krumnow, 3801 Campus Drive, Waco, Texas 76705,  
(817) 867-3964  
Filed: November 14, 1996, 4:50 p.m.

TRD-9616577

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**The Texas State University System**

Wednesday, November 20, 1996, 3:30 p.m., Thursday,  
November 21, 1996, 8:00 a.m., Friday, November 22, 1996,  
9:00 a.m.

Wednesday: Austin College Building; Thursday & Friday: Court-  
room, Criminal Justice Center, Sam Houston State University

Huntsville

AGENDA:

Review of matters of the Board and the Universities in the System including: all matters of curriculum including reports, curriculum and program changes and out-of-country studies; all matters of construction projects and documentation; financial matters of the System Office and the Universities in the System including bond sales, operating budget changes, fees, rates, investment policies, internal audit reports, contract approvals, distinguished faculty programs, purchases of furnishings and equipment, land donations, receipts of gifts and trustee appointments and report made by universities' foundations for each university and the system administration; discussion of pending or contemplated litigation, settlements, or other legal matters; personnel actions including promotions, resignations, retirements, tenure, emeritus status, resolutions of honor, commissioning of police officers, salaries/salary supplements, deliberation of appointment, employment, re-employment of exiting employees, evaluation, reassignment, duties, discipline, dismissal and/or replacement of any system employee including staff, faculty, presidents and the Chancellor. (where appropriate and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810,  
Austin, 78701, (512) 463-1808  
Filed: November 14, 1996, 11:55 a.m.

TRD-9616527

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**Texas Department of Transportation**

Thursday, November 21, 1996, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building  
Austin

Texas Transportation Committee

AGENDA:

Delegations: Rio Grande Valley Partnership-Cameron, Hidalgo, Starr and Willacy Counties; City of Baytown and Baytown Chamber of Commerce. Approve Minutes. Rulemaking: 43 TAC Chapters 1, 2, 3, 4, 9, 15, and 25. Programs. Transportation Planning. Capital Improvement Program. Contract Awards/Rejections/Defaults/Assignments/Claims. Routine Minute Orders. Executive Session for legal counsel consultation, land acquisition matters, and management personnel evaluations, designation, assignments and duties. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701,  
(512) 463-8630.  
Filed: November 13, 1996, 10:39 a.m.

TRD-9616428

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**University of Houston System**

Thursday, November 21, 1996, 8:00 a.m.

Shamrock Room, Hilton Hotel & Conference Center, University of  
Houston, 4800 Calhoun

Houston

Special Board of Regents Meeting

AGENDA:

To discuss the following:

Appointment of Dr. Arthur K. Smith as Chancellor of the University  
of Houston System and President of the University of Houston

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas  
77002, (713) 754-7440.

Filed: November 15, 1996, 3:22 p.m.

TRD-9616677

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**The University of Texas at Austin**

Monday, November 18, 1996, 3:30 p.m.

21st and San Jacinto Streets, Belmont Hall, Room 326

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order

II. Approval of the Minutes of Previous Meeting

### III. New Business

### IV. Announcements/Information Reports

V. Executive Session — Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees — Seciton 551.074, Texas Government Code.

### VI. Adjournment

Contact: Jody Conradt, Women's Athletics, Belmont Hall 718, Austin, Texas 78712-1286, (512) 471-7693.  
Filed: November 15, 1996, 11:53 a.m.

TRD-9616641

## University of Texas at Arlington

Wednesday, December 4, 1996, 12:45 p.m.

501 South Nedderman, Room 323, Life Science Building

Arlington

Institutional Animal Care and Use Committee

### AGENDA:

1. Approval of the May 8, 1996 minutes
2. Further discussion of future improvements for animal facilities.
3. The new NIH Guide.

Contact: Martha A. Mann, Psychology Department, UT-Arlington, Box 19528, Arlington, Texas 76019, (817) 272-3239.

Filed: November 15, 1996, 3:25 p.m.

TRD-9616686

## University of Texas M.D. Anderson Cancer Center

Tuesday, November 19, 1996, 9:00 a.m.

1515 Holcombe Boulevard, Room B8.4344

Houston

Institutional Animal Care and Use Committee

### AGENDA:

Review of Protocol for Animal Care and Use and Modifications thereof.

Contact: Anthony Mastromarino, Ph.D., Associate VP for Research, M.D. Anderson Cancer Center, 1515 Holcombe Boulevard, Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: November 13, 1996, 11:26 a.m.

TRD-9616433

## Texas Workers' Compensation Commission

Friday, November 22, 1996, 9:30 a.m.

4000 South IH35, Room 910-911, Southfield Building

Austin

Medical Advisory Committee

### AGENDA:

1. Call to Order
2. Review, and Possible Approval of the October 25, 1996, Minutes
3. Vote on Recommendation to Commissioners for New MAC Chairman
4. Nomination and Election of MAC Vice Chairman
5. Introduction of New MAC Members
6. Primary Member Responsibilities
7. Update on Proposed Spinal Surgery Second Opinion Rule
8. Distribute Rule Packets
9. Additional Items Submitted by MAC Members
10. Action Items Update
11. Establish Draft Agenda
12. Establish Next Meeting Date
13. Adjournment

Contact: Todd K. Brown, 4000 South IH35, Austin, Texas 78704, (512) 440-5690

Filed: November 14, 1996, 9:34 a.m.

TRD-9616498

## Regional Meetings

Meetings filed November 13, 1996

Austin Transportation Study, Policy Advisory Committee, met at Thompson Conference Center, 26th and Red River, Room 2.102, November 18, 1996 at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West 2nd Street, Austin, Texas, 78767, (512) 499-2275. TRD-9616490.

Bexar Appraisal District, Board of Directors, met at 535 South Main Street, San Antonio, November 18, 1996 at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9616430.

Central Counties Center for MHMR Services, Board of Trustees, met at 304 South 22nd Street, Temple, November 21, 1996 at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, extension 301. TRD-9616437.

Central Texas Council of Governments, Work Force Development Board for Central Texas will meet at 2625 South 31st Street, Temple, November 22, 1996 at 9:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9616465.

Central Texas MHMR Center, Board of Trustees, met at 408 Mulberry Drive, Brownwood, November 18, 1996 at 5:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574. TRD-9616453.



Community Action Committee of Victoria, Texas, Board of Directors, Executive Committee Meeting, met at 1501 North DeLeon, Suite A, Victoria, November 18, 1996 at 12:00 p.m. Information may be obtained from Vicki Smith, 1501 N. DeLeon, Suite A, Victoria, Texas 77902-2142, (512) 578-2989. TRD-9616446.

Golden Crescent Private Industry Council, Oversight Committee, met at 2401 Houston Highway, Victoria, November 18, 1996 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9616449

Golden Crescent Private Industry Council, Executive Committee, met at 2401 Houston Highway, Victoria, November 20, 1996 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9616450.

Gonzales County Appraisal District, Appraisal Review Board, met at 928 St. Paul Street, Gonzales, November 19, 1996 at 1:00 p.m. Information may be obtained from Connie Barfield, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879. TRD-9616488.

Gulf Bend MHMR Center, MidCoast Community Management Team met at 1502 East Airline, Suite 25, Victoria, November 20, 1996 at 12:00 noon. Information may be obtained from Judy Bolton, 1592 E. Airline, Suite 25, Victoria, Texas 77901, (512) 575-0611. TRD-9616452.

Hamilton County Appraisal District, Board, met at 119 E. Henry, Hamilton, November 19, 1996 at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 E. Henry, Hamilton, Texas 76531. TRD-9616482.

Houston-Galveston Area Council, Board of Directors, met at 3555 Timmons Lane, Conference Room A, 2nd Floor, Houston, November 19, 1996, at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9616434.

Mason County Appraisal District, Appraisal Review Board, met at 210 Westmoreland, Mason, November 19, 1996 at 9:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9616491.

Nolan County Central Appraisal District, Board of Directors, met at Oma's Kitchen, 119 E. Third, Sweetwater, Texas 79556, November 15, 1996 at 1:00 p.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9616422.

Nueces-Jim Wells- Kelberg-Kenedy Soil & Water Conservation District, Board of Directors met at NRCS Office, 548 South Highway 77, Suite B, Robstown, Texas 78380. Information may be obtained from Denise Lawhon, 548 South Highway 77, Suite B, Robstown, Texas 78380, (512) 387-4116. TRD-9616439.

Tarrant Appraisal District, Board of Directors, will meet at 2301 Gravel Road, Fort Worth, November 22, 1996, 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024. TRD-9616466.

Meetings Filed November 14, 1996

Bell County Tax Appraisal District, Board of Directors, met at 411 East Central Avenue, Belton, November 19, 1996 at 7:00 p.m. Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9616529.

Bosque County Central Appraisal District, Board of Directors, met at 202 S. Hwy 6, Meridian, November 21, 1996 at 6:30 p.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9616526.

Brazos River Authority, Lake Management Committee, met at Lake Supervisor's Office, Possum Kingdom Lake, November 21, 1996, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9616508.

Burke Center, Board of Trustees, will meet at 3224 Freeman Street, (11:30-1:00), and 4101 South Medford Drive (1:00-5:00), Lufkin, November 26, 1996. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9616514.

Burnet County Appraisal District, Board of Directors, met at 110 Avenue H, Marble Falls, November 21, 1996 at noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9616567.

Dewitt County Appraisal District, Board of Directors, met at 103 Bailey Street, Cuero, November 19, 1996 at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9616528.

East Texas Council of Governments, Private Industry Council, met at 3800 Stone Road, Kilgore, November 21, 1996 at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9616513.

Edwards Aquifer Authority, Ad Hoc Critical Period Management Committee, met at 1615 N. St. Marys Street, San Antonio, November 18, 1996 at 4:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9616564.

Edwards Aquifer Authority, Administrative Committee, met at 1615 N. St. Marys Street, San Antonio, November 19, 1996 at 4:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9616559.

Edwards Aquifer Authority, Legal Committee, met at 1615 N. St. Marys Street, San Antonio, November 19, 1996 at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9616560.

Edwards Aquifer Authority, Finance Committee, met at 1615 N. St. Marys Street, San Antonio, November 20, 1996 at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9616561.

Edwards Aquifer Authority, Executive Committee, met at 1615 N. St. Marys Street, San Antonio, November 21, 1996 at 5:30 p.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9616562.

Harris County Appraisal District, Board of Directors, met at 2800 North Loop West, 8th Floor, Houston, November 20, 1996 at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9616501.

Henderson County Appraisal District, Appraisal Review board, met at 1751 Enterprise Street, Athens, November 14, 1996 at 4:58 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9616599.

Hood County Appraisal District, Board of Directors, met at 1902 West Pearl Street, District Office, Granbury, Texas, November 19, 1996 at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9616540.

Jack County Appraisal District, Board of Directors, met at 210 N. Church Street, Jacksboro, November 19, 1996, 7:15 p.m. Information may be obtained from Gary L. Zeitler, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9616523.

Local Government Investment Cooperative, Board of Directors, met at 1201 Elm Street, Suite 3500, Dallas, November 21, 1996, at 2:00 p.m. Information may be obtained from Patrick Shinkle, 1201 Elm Street, Suite 3500, Dallas, Texas 75270, (214) 672-6775. TRD-9616538.

North Central Texas Council of Governments, Executive Board, met at Centerpoint Two, 616 Six Flags Drive, 2nd Floor, Arlington, November 21, 1996 at 9:30 a.m. Information may be obtained from Edwina J. Shires, P.O. box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9616500.

Riceland Regional Mental Health Authority, Combined Finance/ Human Resources and Program Services Committees, met at 4910 Airport, Rosenberg, November 21, 1996 at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 N. Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD-9616556.

Texas Political Subdivisions Joint Self-Insurance Funds, Board of Trustees, emergency meeting, met at 14135 Midway road, Suite 300, Dallas, November 18, 1996 at 11:00 a.m. Information may be obtained from James Gresham, 14135 Midway Road, Suite 300, Dallas, Texas, (972) 392-9430. TRD-9616575.

Texas Rural Communities, Inc. Board of Directors, will meet at 6505 N. IH35, Doubletree Hotel, Austin, December 5, 1996 at 9:00 a.m. Information may be obtained from Leslie Janca, 1016 La Posada Drive, Suite 200, Austin, Texas 78752, (512) 458-1016. TRD-9616525.

Wood County Appraisal District, Board of Directors, met at 210 Clark Street, Quitman, November 21, 1996 at 1:30 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9616512.

#### Meetings Filed November 15, 1996

Alamo Area Council of Governments, Management Committee, met at 118 Broadway, Suite 400, San Antonio, November 20, 1996 at 10:00 a.m. Information may be obtained from Al J. Notzon, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9616637.

Ark-Tex Council of Governments (ATCOG), Executive Committee, met at Western Sizzlin', 2425 Ferguson Road, Mt. Pleasant, November 21, 1996 at 5:30 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9616721.

Austin Travis County MHMR Center, Board of Trustees, met at 1430 Collier Street Board Room, Austin, November 16, 1996 at 8:00 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9616690.

Bandera County Appraisal District, Appraisal Review Board, met at 1116 Main Street, Bandera, November 19, 1996 at 9:00 a.m. Information may be obtained from P.H. Coates, P.O. Box 1119, Bandera, Texas 78004, (210) 796-3039. TRD-9616606.

Central Plains Center for MHMR & SA, Board of Trustees, met at 208 South Columbia, Plainview, November 21, 1996 at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9616639.

Central Texas Opportunities, Inc, Board, will meet at 1200 So. Frio, Coleman, November 26, 1996 at 7:00 p.m. Information may be obtained from Barbara Metcalf, 1200 South Frio, Coleman, Texas 76834, (915) 625-4167. TRD-9616668.

Clear Creek Watershed Regional Flood Control District, Board, met at 3519 Liberty Drive, Pearland City Hall, November 20, 1996 at 5:00 p.m. Information may be obtained from Jeffrey H. Brennan, 4805 W. Broadway, Pearland, Texas 77581, (713) 485-8051. TRD-9616694.

Deep East Texas Council of Governments, Regional Housing Advisory Council, met at the Alabama Coushatta Indian Reservation, Highway 190 West, Cultural Center, Livingston, November 21, 1996 at 11:30 a.m. Information may be obtained from Ethel Bluitt, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9616638.

Deep East Texas Local Workforce Development Board met at the Cultural Arts Center, Alabama-Coushatta Indian Reservation, Highway 190 East, Livingston, November 21, 1996 at 10:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9616685.

Education Service Center, Region VIII, Board of Directors, will meet at the Alps Restaurant, 108 E. Burton, Mt. Pleasant, November 26, 1996 at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9616633.

Education Service Center, Region XI, Board of Directors, will meet at 3001 North Freeway, Fort Worth, November 26, 1996 at 10:00 a.m. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9616607.

Golden Crescent Private Industry Council, Executive Committee, met at 2401 Houston Highway, Victoria, November 20, 1996 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9616676.

Grayson Appraisal District, Board of Directors, will meet at 205 N. Travis, Sherman, November 27, 1996, at 12:00 p.m. Information may be obtained from Angie Keeton, 205 N. Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9616610.

Grayson Appraisal District, Appraisal Review Board, will meet at 205 N. Travis, Sherman, December 5, 1996 at 8:15 a.m. Information may be obtained from Angie Keeton, 205 N. Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9616609.

Johnson County Appraisal District, Board of Directors, met at 109 N. Main, Suite 201, Room 202, Cleburne, November 21, 1996 at 4:30 p.m. Information may be obtained from Don Gilmore, 109 N. Main, Cleburne, Texas 76031, (817) 558-8100. TRD-9616613.

Johnson County Rural Water Supply Corporation, By-Laws Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, November 19, 1996 at 5:15 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9616680.

Johnson County Rural Water Supply Corporation, Finance Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, November 19, 1996 at 5:25 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9616681.

Johnson County Rural Water Supply Corporation, 5 Year Plan Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, November 19, 1996 at 5:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9616679.

Johnson County Rural Water Supply Corporation, Credentials & Public Relations Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, November 19, 1996 at 5:45 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9616682.

Johnson County Rural Water Supply Corporation, Committee on Committees Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, November 19, 1996 at 5:50 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9616683.

Johnson County Rural Water Supply Corporation, Board, met at Corporation Office, 2849 Highway 171 South, Cleburne, November 19, 1996 at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9616678.

Kendall Appraisal District, Board of Directors, met at 121 South Main Street, Boerne, November 21, 1996 at 5:30 p.m. Information may be obtained from Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9616687.

Kendall Appraisal District, Board of Directors, will meet at 121 South Main Street, Boerne, December 5, 1996 at 5:30 p.m. Information may be obtained from Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9616692.

Lamb County Appraisal District, Appraisal Review Board, will meet at 331 LFD Drive, Littlefield, December 3, 1996 at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79330-0950, (906) 385-6474. TRD-9616605.

Lampasas County Appraisal District, Board of Directors, met at 109 East 5th Street, Lampasas, November 21, 1996, 7:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9616698.

Liberty County Central Appraisal District, Appraisal Review Board, met at 315 Main Street, Liberty, November 21, 1996 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9616636.

Lower Colorado River Authority, Audit Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. and if necessary, November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616674.

Lower Colorado River Authority, Board of Directors, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. reconvening November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616669.

Lower Colorado River Authority, Energy Operations Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. and if necessary, November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616671.

Lower Colorado River Authority, Finance and Administration Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. and if necessary, November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616673.

Lower Colorado River Authority, Land and Water Operations Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. and if necessary, November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616672.

Lower Colorado River Authority, Planning and Public Policy Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. and if necessary, November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616670.

Lower Colorado River Authority, Regional Development Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, November 20, 1996, 9:00 a.m. and if necessary, November 21, 1996. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616675.

Lower Rio Grande Valley Tech Prep. Associate Degree Consortium, Board of Directors, met at the Best Western Palm Aire Motel, 415 South International Boulevard, Weslaco, November 20, 1996 at 12 noon. Information may be obtained from Mrs. Pat Bubb, TSTC Conference Center, Harlingen, Texas 78559-3697, (210) 425-0729. TRD-9616720.

Lubbock Regional MHMR Center, Board of Trustees-Program Committee, met at 1602 10th Street, Board Room, Lubbock, November 22, 1996 at 12:00 noon. Information may be obtained from Gene Menefee, P.O. Box 2828, 1602 10th Street, Lubbock, Texas 79408, (806) 766-0202. TRD-9616701.

Panhandle Ground Water Conservation District No. 3, Board of Directors Public Meeting, met at District Office, 300 S. Omohundro Street, White Deer, November 21, 1996 at 7:00 p.m. Information may be obtained from C.E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9616615.

Sabine Valley Center, Board of Trustees, met at Sabine Valley Industries, 808 Jordan Valley Road, Longview, November 21, 1996 at 7:00 p.m. Information may be obtained from Inman White, Executive Director, or LaVerne Moore, P.O. Box 6800, Longview, Texas, 75608, (903) 237-2362. TRD-9616723.

Swisher County Appraisal District, Board of Directors, met at the Conestoga Restaurant, North Hwy 87, Tulia, November 21, 1996 at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box B, Tulus, Texas 79088, (806) 995-4118. TRD-9616634.

Trinity River Authority of Texas, Legal Committee, will meet at 5300 S. Collins, Arlington, November 22, 1996, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9616640.

West Central Texas Council of Governments, Workforce Development Board, met at 1025 East North Sixth Street, Abilene, November

20, 1996 at 12:00 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9616688.

Meetings Filed November 18, 1996

Education Service Center, Region One, Board, met at 1900 W. Schunior, Edinburg, November 21, 1996 at 9:00 a.m. Information may be obtained from Dr. Roberto Zamora, 1900 W. Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9616765.

Lower Colorado River Authority met at 3701 Lake Austin Boulevard, Hancock Building, Austin, November 21, 1996 at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Blvd., Austin, Texas 78767, (512) 473-3304. TRD-9616762.

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# IN ADDITION

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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.

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## Texas Alcoholic Beverage Commission

### Request for Consulting Services

This request for consulting services is filed by the Texas Alcoholic Beverage Commission in compliance with the requirements of Chapter 2254 of the Government Code.

The Texas Alcoholic Beverage Commission seeks proposals from qualified substance abuse prevention education consultants who would assist and guide agency staff who have been assigned the responsibility of creating curriculum, pilot testing, and evaluating a school-based alcohol use/abuse prevention education program. This proposal is for a continuation of services which has previously been provided to this agency by a private consultant.

Consultants who desire more information concerning this project or who wish to submit offers of consulting service should contact the agency's chief purchaser, Bob Burnette, by voice phone at (512) 206-3260, by fax at (512) 206-3274, or by mail at P. O. Box 13127, Austin, Texas 78711.

All offers of consulting service submitted in response to this invitation for offers must be in the hands of Bob Burnette, by 5:00 p.m., December 22, 1996.

The offers received will be evaluated by a committee of five agency employees. Committee members will include the agency's chief purchaser, director of resource management, chief of enforcement, chairperson of the enforcement division's SAVE committee, a SAVE committee member, and the administrator or his designated representative. The committee will assemble within three business days of the deadline for the submission of offers specified in this invitation. Once assembled, the committee will remain in continuous session during normal business hours until all the proposals have been evaluated.

All offers will be evaluated on a one hundred point scale, with points scored for each criterion in the manner specified for that criterion. Scores awarded for meeting the requirements of the criterion for Qualifications, References, Examples of Work and Action Plans, for each proposal, will be the average of the scores assessed by the individual committee members. The consultant or consultant group

who submitted the offer that scores the highest number of points will be awarded the contract.

**Total Cost-**As part of their proposal each responding party will submit an outline that briefly details cost. The outline is to include the following information: A maximum number of billable consultant work hours, cost per billable consultant work hours, total maximum cost of billable consultant work hours, total maximum cost of reimbursable travel expenses, total maximum cost of "other reimbursable expenses," and a grand total for maximum possible project cost. The proposal with the lowest maximum possible project cost will be awarded 50 points. The remaining proposals will be awarded points for meeting this criterion based on the following formula: **Number of Points=50 (proposal cost/lowest proposal cost) . Maximum Score=50 points.**

**Qualifications-Resumes** for each member are to be submitted with the proposal which demonstrates the consultant or team meets or exceeds the following qualifications. Collectively the team must demonstrate at least five years experience in each of the following areas: adolescent substance/alcohol abuse prevention, secondary school teaching/counseling, development and implementation of school-based substance/alcohol abuse prevention curriculums and instructor training programs, evaluation of education programs, and development of evaluation and program monitoring designs. Those who fail to demonstrate their project team meets these qualifications will be immediately disqualified from consideration. The remaining proposals will be reviewed and assessed a score of 0-10 points by each committee member based on their assessment of the extent to which those submitting the proposal, as a group, exceed the qualifications. **Maximum Score=10 points .**

**References-**Five letters of reference from past customers are to be submitted with each proposal. These references will be reviewed and assessed a score of 0-10 points by each committee member based on their assessment of the references. **Maximum Score=10 points.**

**Examples of Work-**One example of a school-based substance abuse prevention education curriculum developed by a project team member will be submitted with the proposal, along with documents providing an example of a program evaluation, designed and conducted by

a project team member, of a substance abuse prevention education program. These submissions will be reviewed and assessed a score of 0-15 points by each committee member based on their assessment of the quality of the work. **Maximum Score-15 points.**

**Action Plan-**Each party submitting a proposal shall also submit with that proposal an action plan that details a project completion time-line. These action plans will be reviewed and assessed a score of 0-15 points by each committee member based on their assessment of the quality of the action plan and of the degree to which it demonstrates an understanding of and commitment to *Project SAVE*. **Maximum Score-15 points.**

Issued in Austin, Texas on November 15, 1996.

TRD-9616684  
Doyne Bailey

Administrator  
Texas Alcoholic Beverage Commission  
Filed: November 15, 1996

◆ ◆ ◆  
**Office of the Consumer Credit Commissioner**  
**Notice of Rate Ceiling**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

Graphic

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	11/18/96-11/24/96	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

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

TRD-9616548  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: November 14, 1996

◆ ◆ ◆  
**Court of Criminal Appeals**

**Order Adopting Amendments to Texas Rules of Appellate Procedure Effective November 12, 1996**

BE IT ORDERED by the Court of Criminal Appeals that the following designated amendments to the Texas Rules of Appellate Procedure [TRAP] are hereby adopted and promulgated to govern criminal cases and criminal law matters under authority and in conformity with Acts 1985, 69th Leg., Ch. 685, p. 2472, Section 2. This order does not amend any existing rule, promulgate any new rule nor repeal any rule in the Texas Rules of Civil Procedure. No rule amended by this order shall be applicable to any civil case ["actions of civil nature" (Rule 2, T.R.Civ.P.)] unless and until it has been promulgated by the Supreme Court of Texas.

1. Tex.R.App.Pro. 51(c) is amended to read as follows:

(c) Duty of Clerk. Upon perfection of the appeal, the clerk of the trial court shall prepare under his hand and seal of the court and immediately transmit the transcript to the appellate court designated by the appellant. The pages of the transcript shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the transcript. The transcript shall be prepared in the form directed by the Supreme Court and the Court of Criminal Appeals which will make an order or orders in such respect for the guidance of trial clerks. In criminal cases, other than those in which the death penalty has been imposed, the transcript shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court. In cases in which the death penalty has been imposed, the transcript shall be prepared in triplicate and two copies shall be retained by the clerk, for use by the parties with the permission of the court.

2. Tex.R.app.Pro. 53(1) is amended to read as follows:

(1) Duplicate statement in criminal cases. In criminal cases, other than the appeal of a capital murder conviction resulting in the sentence of death, if a party desires a Statement of Facts included in the record, a duplicate of the Statement of Facts shall be prepared by the court reporter and filed with the clerk of the court. For the appeal of

a capital murder conviction resulting in the sentence of death, two duplicates of the Statement of Facts shall be prepared by the court reporter and filed with the clerk of the court.

3. Tex.R.App.Pro., Appendix for Criminal Cases, Rule 1(b)(2), is amended to read as follows:

(2) Except as otherwise allowed by this rule, the statement of facts shall be typewritten or printed on opaque and unglazed white paper not less than 13-pound weight, 8-1/2 by 11 inches in size, in good standard type of pica size, 10 or 12 letters per linear inch, double spaced and in upper and lower case type, an average of 25 lines of type per page and typed on only one side of the paper, with no sheets cut or mutilated. The margin on the left-hand side of the page shall be not less than 1-1/4 inches nor more than 2 inches. The pages shall be numbered consecutively at the bottom of each page, securely bound on the left margin, and labeled on the cover thereof "Volume \_\_\_\_\_ of \_\_\_\_\_ Volumes." The statement of facts may be prepared in a condensed format, four pages of testimony to each side, duplex printed, along with an ASCII disk(s) containing the entire statement of facts.

BE IT FURTHER ORDERED that the Clerk of this Court shall file with the Secretary of State of the State of Texas, for and in behalf and as the act of this Court, a duplicate original copy of this order and the Clerk shall cause them to be published in the Texas Register and the Texas Bar Journal, as provided by the above Act.

BE IT FURTHER ORDERED that these amended rules become effective November 12, 1996, and remain in effect unless and until disapproved, modified or changed by the Legislature or unless and until supplemented or amended by this Court pursuant to the above Act. BE IT FURTHER ORDERED that this order and these rules shall be recorded in the minutes of this Court, and that the original of this order signed by the members of this Court and of these rules shall be preserved by the Clerk of this Court as a permanent record of this Court.

SIGNED and ENTERED in duplicate originals this 12th of November, 1996.

MICHAEL J. McCORMICK, Presiding Judge

SAM HOUSTON CLINTON, Judge

BILL WHITE, Judge

CHARLES F. BAIRD, Judge

MORRIS L. OVERSTREET, Judge

FRANK MALONEY, Judge

LAWRENCE E. MEYERS, Judge

STEPHEN W. MANSFIELD, Judge

SHARON F. KELLER, Judge

Issued in Austin, Texas, on November 15, 1996.

TRD-9616600

Richard Wetzel

Executive Administrator

Court of Criminal Appeals

Filed: November 15, 1996

## Edwards Aquifer Authority

### Notice of Public Hearing

The Edwards Aquifer Authority will conduct three public hearings to receive comments on proposed rules governing the filing and processing of applications for permits to withdraw water from the Edwards Aquifer. These public hearings will be held at the following times and locations:

**November 25, 1996, at 7:00 p.m.**

City of San Marcos, Dunbar Recreation Center, 801 Martin Luther King Drive, San Marcos, Hays County, Texas

**December 3, 1996, at 6:30 p.m.**

Texas Agricultural Extension Service, 1619 Garner Field Road, Uvalde, Uvalde County, Texas

**December 5, 1996, at 7:00 p.m.**

Edwards Aquifer Authority, 1615 North St. Marys, San Antonio, Bexar County, Texas

Issued in San Antonio, Texas, on November 18, 1996.

TRD-9616769

Rick Illgner

General Manager

Edwards Aquifer Authority

Filed: November 18, 1996

## Employees Retirement System of Texas

In accordance with §4 of Article 3.50-2, Texas Insurance Code, as amended, the Employees Retirement System of Texas (ERS) announces a request for applications from Health Maintenance Organizations (HMOs) to provide prepaid health benefits for the Texas Employees Uniform Group Insurance Program (UGIP) during Plan Year 1998, beginning September 1, 1997. HMOs must provide the level of benefits as required in the application.

HMOs wishing to respond to this request must: 1) be certified by the State of Texas, 2) be Federally approved, 3) have been providing services in the service area for which application is made for at least 12 months prior to February 1, 1997, and 4) have at least 25 UGIP participants who reside within the HMO service area.

The application is available upon request from the ERS.

The deadline for receipt of the completed applications in response to this request will be 5:00 p.m. on February 3, 1997.

The ERS reserves the right to accept or reject any application submitted. The ERS is under no legal requirement to execute a resulting contract on the basis on this advertisement.

The ERS will base its choice of HMOs on demonstrated capacity to provide adequate services to UGIP participants, superior qualifications, and evidence of conformance with the application criteria.

This application does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of

a contract where the ERS deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the application, contact James W. Sarver, Director, Group Insurance Division, Employees Retirement System of Texas, 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207, (512) 867-3217.

Issued in Austin, Texas, on November 18, 1996.

TRD-9616750

Sheila W. Beckett

Executive Director

Employee Retirement System of Texas

Filed: November 18, 1996

## Texas Department of Health

### Correction of Errors

The Texas Department of Health adopted new §289.258. The rule appeared in the July 16, 1996, issue of the *Texas Register* (21 TexReg 6628).

On page 6633, §289.258(r)(1), second column, the paragraph was split at a reference to another paragraph causing confusion. The paragraph should read: "...who has completed the requirements of this paragraph and paragraphs (2) and (3) of this subsection, the individual..."

On pages 6633-6634, §289.258(r)(2), the paragraph was split at a reference to another paragraph causing confusion. The paragraph should read: "...who has completed the requirements of this paragraph and paragraphs (1) and (3) of this subsection..."

On page 6634, §289.258(r)(3), page 21 TexReg 6634, first column, the paragraph was split at a reference to another paragraph causing confusion. The paragraph should read: "...who has completed the requirements of this paragraph and paragraphs (1) and (2) of this subsection..."

On page 6634, §289.258(s)(3)(A), second column, subparagraphs (A) and (B) run together causing confusion. The subparagraphs should be split as follows:

"(A) the revisions do not reduce the safety of the facility;

(B) the revisions are consistent with the outline or summary of procedures including procedures for changes to operating, safety, and emergency procedures submitted with the license applications;"

On page 6635, §289.258(t)(1), first column, a parentheses is missing at the end of the second sentence in paragraph. The sentence should read as follows: "...accident dose ranges (see §289.202(p)(3) of this title)."

On page 6635, §289.258(t)(2), first column, the last sentence is missing some language. The last sentence should read as follows: "Acceptable dosimeters shall read within +/- 30% of the true radiation dose."

On page 6635, §289.258(u)(3), first column, most of the language of the paragraph is missing. The paragraph should read as follows: "Portable radiation survey meters shall be calibrated at least annually to an accuracy of +/- 20% for the gamma energy of the sources in use. The calibration shall be done at one point per decade over the range that will be used. Portable radiation survey meters shall be

of a type that does not saturate and read zero at high radiation dose rates."

On page 6637, §289.258(cc)(1)(E), first column, delete the letter "z" at the beginning of the word "inoperability."

### Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Methodist Health Care System of San Antonio, Ltd., doing business as Village Oaks Medical Center, (registrant R14294) of San Antonio to cease and desist using the Bennett x-ray unit (Model Number CM650, Serial Number 6B-11415) to perform 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 15, 1996.

TRD-9616654

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 15, 1996

### Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following certificates of registration: Hal C. Douglass, M.D., Dallas, R02252, October 28, 1996; James L. Bowman, D.D.S., Austin, R08411, October 28, 1996; O'Quinn Veterinary Hospital, Pinehurst, R15429, October 28, 1996; Masterson, Fort Worth, R17147, October 28, 1996; Midwest X-Ray, Maple Plain, Minnesota, R17150, October 28, 1996; Larry B. Fowler, D.D.S., Conroe, R20694, October 28, 1996.

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 15, 1996.

TRD-9616656

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 15, 1996

### Notice of Revocation of Radioactive Material Licenses



The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following radioactive material licenses: Amber Well Completion Rental, Inc., Austin, L03267, October 28, 1996; Navasota Regional Hospital, Navasota, L03324, October 28, 1996.

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 15, 1996.

TRD-9616655

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: November 15, 1996

### Statewide Request for Proposals-Temporary Child Care for Children with Disabilities and Chronic Illness

The Texas Department of Health (TDH) is soliciting proposals for the provision of respite care services to families with children who are medically fragile or medically complex in Harris County. Respite services are defined as: any support options provided on a short term basis for the purpose of relief to the primary care giver in providing care to individuals of all ages with disabilities, and/or children or adults at risk of abuse or neglect.

For the purposes of this RFP, respite services will be targeted to children who are medically fragile or medically complex, ages 0-21 and on program waiting lists. This proposal seeks applicants to continue the development of a prototype respite service in Harris County, Texas to meet the unique needs of families who have children with special health care needs who are medically fragile or medically complex and who are on waiting lists for respite services. Priority consideration will be given to nonprofit agencies and organizations which have experience in working with children with disabilities, terminal or chronic illness, and their families. The project is intended to maintain and support the family unit, to strengthen the parent-child bond, and to alleviate social, economic, and financial stress for these families. Applicant agencies must use a collaborative model for respite services; be family-driven, family-centered, and promote family choice through an available respite voucher system; be cost effective (there is a required 25% match by applicant agencies); provide access to quality in-home respite services, out-of-home respite services, and hospital-based respite services by an experienced pediatric service provider; link to child licensing and child placement service agencies for the development of habilitative homes; coordinate with families, care givers, local physicians, and other related family support and medical services; link to subspecialty medical and rehabilitative services; and provide information and referral services. A sliding fee scale must be implemented for respite services.

One temporary child care (respite) project will be funded and reimbursed through a contractual agreement with TDH, Bureau of Children's Health. A federal grant has been awarded to the Texas Department of Health for a three-year period from October 1, 1994 through September 30, 1997. The project selected through this

request for proposal will complete the third year of the grant (fiscal year 1997). It is anticipated that an additional award will be available through a no-cost extension for partial funding for fiscal year 1998. The contract award will be based on available federal funding. The contract will be in accordance with Texas law, TDH policies, and the Uniform Grant and Contract Management Acts (UGCMA) Manual which is available from TDH, Grants Management Division, 1100 West 49th Street, Austin, Texas 78756-3199.

Proposals will be evaluated on the following criteria: documentation of the ability to provide respite services to families with children who are medically fragile, targeting minority children and children with AIDS; evidence of multi-agency involvement and collaboration in project design and operation; evidence of experience in managing grant funds; the cost effectiveness of service options selected; assurance of mechanisms to meet the new requirements of the Home and Community Support Services Act of Texas; array of respite services offered; coordination with Community Resource Coordinating Groups (CRCG) and regional TDH staff; assurance of collaboration with Child Care and Development Block Grants; evidence that cultural competence of service providers has been considered; evidence of a mechanism for planning for respite services after initial grant funds terminate; the quality of the proposal's written operating plan; the availability of other funding sources; the caliber and experience of project staff; the demonstration of ability to meet unique cultural, geographic, and demographic needs; and evidence of broad-based community support. Applicant agencies must have a base of operation physically located in Harris County.

Proposals submitted will include: a plan to provide services to a minimum of 60 families; discussion of the model to be utilized; a detailed plan describing the project's purpose, goals, services, objectives and activities; an evaluation component to assess the project's effectiveness; specific responsibilities of project staff; and documentation of broad local community and area support. A process should be described to develop a mechanism for ongoing future funding which is locally-based. Only one project will be funded at approximately \$100,000 for fiscal year 1997. All income generated from third party payments and fees to families must be utilized by the contract recipient in accordance with TDH policy interpreting the UGCMA regulations.

It is anticipated that the Texas Respite Resource Network (TRRN) will provide ongoing technical assistance and consultation to the project which is funded.

Proposal packets may be obtained by contacting Wanda Hamm, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179 ((512) 458-7111, extension 3069). Proposals must be received in the TDH central office by 5:00 p.m. on Friday, December 20th, 1996. Proposals that do not meet this deadline will not be considered.

TDH reserves the right to reject any or all applications and is not liable for any costs incurred by the applicant in the development, submission, or review of the application. Any costs incurred in the preparation of the application shall be borne by the applicant and are not allowable in this RFP.

Issued in Austin, Texas, on November 18, 1996.

TRD-9616789

Susan K. Steeg

General Counsel

Texas Department of Health  
Filed: November 18, 1996

## Texas Health and Human Services Commission

### Excluded Medicaid Providers

In compliance with the Medicare and Medicaid Patient Protection Act of 1987, the following list provided by the Texas Health and Human Services Commission (HHSC) which identifies providers or employees of providers who are excluded from state and federal health care programs since publication of the May 1996 Medicaid Bulletin.

Providers excluded from the Medicaid and Title XX programs must not order or prescribe services to clients after the date of exclusion. Services rendered under the medical direction or under the prescribing orders of an excluded provider will also be denied. Providers who submit cost reports cannot include the salaries/wages/benefits of employees who have been excluded from Medicaid. Additionally, excluded employees are not permitted to provide Medicaid services to any patient/client.

Name

License/Provider Number

City

Effective Date of Exclusion

Period of Exclusion

DOCTORS:

Bailey, Jr., John L., DC

Channelview

08/13/96

INDEFINITE

Barnes, Carnell M., PhD

Haworth, OK

08/13/96

INDEFINITE

Bonds, Douglas B., MD

H3551

Baton Rouge, LA

06/22/96

INDEFINITE

Brown, William C., MD

H3859

Houston

08/17/96

INDEFINITE

Calhoun, George W., DC

Austin

08/13/96

INDEFINITE

Castella, Antonio, MD

F0146

New York, NY

06/22/96

INDEFINITE

Goldman, Eugene J., MD

D1426

Houston

08/17/96

INDEFINITE

Gorman, Mary G., MD

H3249

Austin

08/17/96

INDEFINITE

Hunsdon, Cary R., DC

5744

Arlington

09/15/96

INDEFINITE

Hunt, Glenn R., MD

D7095

Copperas Cove

06/22/96

INDEFINITE

Kotula, Jeanne, PhD

Sheppard AFB

10/10/96

INDEFINITE

Noaman, Abdul G.A., MD

F0273

Sherman

08/17/96

INDEFINITE

Oliver, Monte B., DC

C4694

Lindale

08/13/96

INDEFINITE

Patton, Garry J., MD

G1746  
Mexia  
08/17/96  
INDEFINITE  
Placide, Frantz, OD  
G5055T  
El Paso  
08/13/96  
INDEFINITE  
Poscablo, Teodulo M., MD  
H5034  
Arlington  
06/22/96  
INDEFINITE  
Riedweg, Edward A., MD  
E3757  
Hunt  
08/17/96  
INDEFINITE  
Saleh, Waleed, MD  
F2897  
Olean, NY  
08/17/96  
INDEFINITE  
Saunders, Ronald W., DC  
C4700  
San Antonio  
09/15/96  
INDEFINITE  
Vera, Alfonso, MD  
Puebla, Mexico  
08/13/96  
INDEFINITE  
Woywood, Roger B., DC  
C5130  
Dallas  
08/13/96  
INDEFINITE  
NURSES:  
Bates, Eileen M., RN  
516043

Odessa  
06/19/96  
INDEFINITE  
Bond, Susan J., RN  
507890  
Houston  
05/15/96  
INDEFINITE  
Boner, Judith C., LVN  
072595  
Decatur  
10/24/96  
5 years  
Collins, Glenda J., RN  
239510  
Austin  
02/28/96  
INDEFINITE  
Diamond, Patrick F., RN  
243182  
Corpus Christi  
03/29/96  
INDEFINITE  
Langenheim-Delacosa, Ann E., RN  
563233  
Houston  
07/25/96  
INDEFINITE  
Lebron, David D., RN  
566096  
Metairie, LA  
06/19/96  
INDEFINITE  
Nelson, Scott N., RN  
610854  
San Angelo  
10/31/96  
5 years  
Nielsen, Inas L., RN  
446736  
Corpus Christi

06/19/96

INDEFINITE

Strutton, Denise D., RN

462396

Sachse

06/19/96

INDEFINITE

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

TRD-9616542

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: November 14, 1996

**Texas Department of Insurance**

**Insurer Services**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for incorporation in Texas for Sierra Casualty Insurance Company of Texas, a domestic fire and casualty company. The home office is in Dallas, Texas.

Application for incorporation in Texas for Contractors Mutual Insurance Company, a domestic fire and casualty company. The home office is in Fort Worth, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on November 15, 1996.

TRD-9616717

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 15, 1996

**Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers**

Notice is given to the public of the application of the listed small employer carriers to be risk-assuming carriers under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carriers have applied to risk-assuming carriers:

Mercy Health Plans of Missouri, Inc.

Comprehensive Health Services of Texas, Inc.

The applications are subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on these applications to be risk-assuming carriers, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the applications, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applications to be risk-assuming carriers.

Issued in Austin, Texas, on November 15, 1996.

TRD-9616716

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 15, 1996

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of ITT-Comprehensive Employee Benefit Service Company, a foreign third party administrator. The home office is Simsbury, Connecticut.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on November 15, 1996.

TRD-9616713

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: November 15, 1996

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Linda H. Hicks (doing business under the assumed name of Flex Benefit Administrators), a domestic third party administrator. The home office is Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on November 15, 1996.

TRD-9616714

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance  
Filed: November 15, 1996

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Harris Methodist Health, Inc., a domestic third party administrator. The home office is Fort Worth, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104. Caroline Scott General Counsel and Chief Clerk Texas Department of Insurance

Issued in Austin, Texas, on November 15, 1996.

TRD-9616711  
Caroline Scott  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: November 15, 1996

## Texas Department of Mental Health and Mental Retardation

### Notice of Correction Regarding Availability of 6-Bed Facility in the ICF/MR Program

Notice is hereby given that a change in procedure has occurred regarding the availability of a 6-bed facility in the ICF/MR Program originally published in the October 1, 1996, *Texas Register*. Applications will be accepted from 8:00 a.m. to 5:00 p.m. on November 26, 1996. All applications received on November 26, 1996, will be placed in a drawing to determine which application will be approved to develop the available six beds in Region 8 or 11. The first application drawn that is in complete compliance with 25 TAC §406.53, Provider Application Requirements Specific to ICF/MR, will be approved to develop the available six beds in Region 8 or 11. As stated in the original notice, to obtain an application, a written request should be mailed to: TDMHMR, ICF/MR Provider Enrollment/Contracting, Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668. Completed applications should be mailed to: TDMHMR, ICF/MR Provider Enrollment/Contracting, Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668 or hand delivered to TDMHMR, ICF/MR Provider Enrollment/Contracting, Medicaid Administration, 909 West 45th, Building 4, Austin, Texas 78751.

Only those applications received on November 26, 1996, will be eligible for the drawing. Only one application per owner will be included in the drawing. Requests for additional information regarding this notice should be directed to Medicaid Administration, Contracts Section at (512) 206-5718.

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

TRD-9616441

Ann K. Utley  
Chair, Texas MHMR Board  
Texas Department of Mental Health and Mental Retardation  
Filed: November 13, 1996

### Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following Medicaid program: State-operated ICF/MR. The proposed reimbursements will cover the time period January 1, 1997 through December 31, 1997. The public hearing is held in compliance with Title 25, Texas Administrative Code, Chapter 409, Subchapter A, §409.002(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The hearing will be held at 8:30 a.m., Tuesday, December 10, 1996, in the Auditorium of the TDMHMR Central Office (main building) at 909 West 45th Street in Austin, Texas.

Persons who wish to offer testimony but who are unable to attend the hearing may submit written comments which must be received by noon the day of the hearing. The written comments should be sent to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668 or faxed to (512) 206-5725.

Interested parties may obtain a copy of the reimbursement briefing package by calling the Data Analysis Section at 512/206-5680. If interpreters for the hearing impaired are required, please contact the Data Analysis Section at the number given above at least 72 hours in advance of the hearing.

Issued in Austin, Texas, on November 18, 1996.

TRD-9616810  
Ann K. Utley  
Chair, Texas MHMR Board  
Texas Department of Mental Health and Mental Retardation  
Filed: November 18, 1996

## Texas Natural Resource Conservation

### Correction of Error

The Texas Natural Resource Conservation Commission adopted new §§122.511-122.515, concerning the requirements for specific general operating permits. The rules appeared in the October 11, 1996, issue of the *Texas Register* (21 TexReg 9863).

On page 9865, first paragraph under issue number 4, last line, the reference should be to §122.512(c)(12), rather than to §122.512(12).

On page 9867, first paragraph under issue number 20, third sentence, the acronym for nitrogen oxides (No<sub>x</sub>) was divided. The "NO" ended the line, and the subscript "x" appeared at the beginning of the next line.

On page 9882, paragraph (17), last line, the reference to §115.212(a)(2) and (4)-(6) of this title... was split and an extra line inserted.

On page 9884, 9897, and 9901, second column, subparagraph (I) was italicized and indented, such that it appeared to be a subclause.

The following corrections are to the permit tables which were published in the Tables and Graphics part of the issue.

On page 10000, Figure 19:30 TAC §122.511(c)(15), the Index Numbers in the fourth column 511-20-001, 511-20-002, and 511-20-003 should instead read 511-19-001, 511-19-002, and 511-19-003.

On page 10042, Figure 8:30 TAC §122.515(c)(5), Index Numbers, eighth column, 515-08-012 was skipped. Therefore, the index numbers from 515-08-013 through 515-08-71 should all be renumbered.

On page 10049, Figure 9:30 TAC §122.515(c)(6), the Index Number in the sixth column, last row 515-09-0123 should instead read 515-09-013.

On pages 10052-10057, Figure 13:30 TAC §122.515(c)(10), the Index Numbers in the seventh column are almost all misnumbered. They should be sequentially numbered in each row starting from row two's index number 515-13-002 (the first row's index number is correct as are rows 3-1) through 515-13-058.

On page 10061, Figure 17:30 TAC §122.515(c)(14), in the last row and in the last column (entitled Recordkeeping and Reporting) the "77" should be deleted from the citation §115.136(b)(2), (D)(3), (4)77.

◆ ◆ ◆  
**Notice of Applications for Waste Disposal Permits for the week ending November 8th -November 15, 1996**

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the permit number or other recognizable reference to this application; (3) the statement "I/we request a public hearing;" (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; (5) a description of the location of your property relative to the applicant's operations; and (6) your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. 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.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

CITY OF DEPOT, P.O. Box 354-A, Deport, Texas 75435, the City of Deport Wastewater Treatment Plant, the plant site is approximately 1,000 feet south of South Highway 271 and 1,400 feet west of the

intersection of Farm-to-Market Road 1149 and U.S. Highway 271 in Lamar County, Texas, renewal, 10741-01.

HORNSBY BEND UTILITY COMPANY, INC., 3223 Parkhills Drive, Austin, Texas 78746, the Austin's Colony Wastewater Treatment Facilities are approximately 1.3 miles south-southeast of the intersection of Farm-to-Market Road 969 and Hunter Bend Road and approximately 2.3 miles southeast of the intersection of Farm-to-Market Roads 969 and 973 in Travis County, Texas, renewal, 13138-01.

CITY OF HOUSTON, DEPARTMENT OF PUBLIC WORKS AND ENGINEERING, P.O. Box 262549, Houston, Texas 77207-2549, the wastewater treatment facilities are south of Huffman-Eastgate Road, approximately 6,500 feet west of the intersection of Farm-to-Market Road 1960 and Huffman-Eastgate Road in Harris County, Texas, renewal, 10495-115.

CITY OF HOUSTON, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549, the HC MUD #266 Wastewater Treatment Plant is 6,000 feet southwest of the intersection of U.S. Highway 59 and the North Belt Freeway and 750 feet south of the North Belt Freeway, north of the City of Houston in Harris County, Texas, renewal, 10495-137.

IDLEWOOD PROPERTY OWNERS ASSOCIATION, INC., P.O. Box 3056, Lufkin, Texas 75903-3056, the wastewater treatment facilities are approximately 0.6 mile northeast of U.S. Highway 69, approximately 1.5 miles northwest of the City of Lufkin and 1.9 miles southeast of the intersection of U.S. Highway 69 and Farm-to-Market Road 2021 in Angelina County, Texas, amendment, 11620-01.

LAKEVIEW METHODIST ASSEMBLY, Route 5, Box 5586, Palestine, Texas 75801, the wastewater treatment facilities are approximately one mile north of State Highway 294 and approximately three miles east of the intersection of State Highway 294 and U.S. Highway 79 in Anderson County, Texas, renewal, 10578-01.

CITY OF MARSHALL, P.O. Box 698, Marshall, Texas 75671, the Southside Wastewater Treatment Plant is southeast of the City of Marshall, approximately 1,800 feet southeast of the intersection of Interstate Highway 20 and Five Notch Road in Harrison County, Texas, amendment, 10583-002.

CITY OF SAN JUAN, 709 South Nebraska, San Juan, Texas 78589, the wastewater treatment plant is approximately 1.9 miles south of U.S. Highway 83 Business Route at the south end of the San Antonio Road in the City of San Juan in Hidalgo County, Texas, renewal, 11512-01.

SIERRA HEALTH SYSTEMS MANAGEMENT, INC., 816 Congress Avenue, Austin, Texas 78701, the wastewater treatment facility and disposal site are at 11127 Circle Drive, approximately 1,200 feet northeast of the intersection of U.S. Highway 290 and Circle Drive, approximately 5.0 miles west of the intersection of U.S. Highway 290 and State Highway 71 in Travis County, Texas, new, 13860-01.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Institutional Division, P.O. Box 99, Huntsville, Texas 77342-0099, the Ellis Unit No. 1 Wastewater Treatment Plant is approximately 3.5 miles northwest of State Highway 19 on Farm-to-Market Road 980 and approximately 12 miles northeast of the City of Huntsville in Walker County, Texas, renewal, 11180-01.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, P.O. Box 99NC, Huntsville, Texas 77342-0099, the wastewater treatment facilities are

on the Smither's Farm Road, outside the southeast corner of the security compound of Ellis II unit; approximately two miles north of the intersection of Farm-to-Market Road 980 and Turkey Creek in Walker County, Texas, amendment, 11180-02.

TEX-SUN PARKS, L.C., 11767 Katy Freeway, Suite 690, Houston, Texas 77079, the Western Pines Mobile Home Community Wastewater Treatment Plant is approximately 2,000 feet west of Fry Road and 1,000 feet north of Morton Road in Harris County, Texas, amendment, 12189-01.

UNION OIL COMPANY OF CALIFORNIA, P.O. Box 237, Nederland, Texas 77627, the Beaumont Terminal, a bulk oil storage and shipment terminal for crude oil, intermediates, and refined petroleum products, the plant site is on the north side of State Highway 366, approximately 1,500 feet east of the intersection of State Highway 366 and State Highway 347, adjacent to the City of Nederland, Jefferson County, Texas, amendment, 00316.

U.S. DEPARTMENT OF AGRICULTURE-FOREST SERVICE, 701 North First Street, Lufkin, Texas 75901, the Ragtown Recreation Area Wastewater Treatment Facilities, the plant site is on the north side of Forest Road 132, approximately two miles east of the intersection of Farm-to-Market Road 3184, Forest Road 126 and Forest Road 132; on the shores of Toledo Bend Reservoir at the Brushy Creek inlet in the Sabine National Forest in Shelby County, Texas, renewal, 12269-01.

WILLIAMSBURG REGIONAL SEWAGE AUTHORITY, 1100 Louisiana Street, Suite 400, Houston, Texas 77002-5211, the Williamsburg Regional Sewage Authority Wastewater Treatment Plant is at 22823 Franz Road, approximately 5,000 feet west and 5,600 feet north of the intersection of Interstate Highway 10 and Mason Road in Harris County, Texas, renewal, 11598-01.

Issued in Austin, Texas, on November 15, 1996.

TRD-9616611  
Mamie M. Black  
Acting Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: November 15, 1996

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#### Notice Of Receipt Of Application And Declaration Of Administrative Completeness For Municipal Solid Waste Management Facilities For The Week Ending November 15, 1996

APPLICATION BY THE CITY OF SNYDER; Proposed Permit Amendment Number MSW1463-A, authorizing an amendment to their Type I and IV (Landfill) municipal solid waste management facility permit. The existing site covers about 142.5 acres of land and is to daily receive about 80 tons of solid waste. The site is located on South Highway 84, about 35 miles southeast of the City of Snyder, in Scurry County, Texas.

APPLICATION BY WASTE MANAGEMENT OF TEXAS, INC.; Proposed Permit Amendment Number 2093-A, authorizing an amendment to their Type I (Landfill) municipal solid waste management facility permit. The existing site covers about 478.52 acres of land, and is to daily receive about 5,000 tons of solid waste. The site is located on Covel Road, about 1.25 miles southwest of the intersection

of Ray Ellison Boulevard and Interstate Highway 410, in the City of San Antonio, Bexar 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 I/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 15, 1996.

TRD-9616612  
Mamie M. Black  
Acting Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: November 15, 1996

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### Texas Parks and Wildlife Department

#### Meeting of Barton Springs Salamander Conservation Team

The Barton Springs Salamander Conservation Team (BSSCT) will hold a working group meeting on Thursday, December 19, 1996, 9:00 a.m. at the U.S. Fish and Wildlife Service, Ecological Services-Filed Office (Hartland Bank Building), 10711 Burnet Road, Austin. The public is invited to observe this meeting. No opportunity for oral comments from the public is allotted for this meeting, but written comments will be accepted. For more information, contact Dr. David E. Bowles, BSSCT Chairman (512) 754-6844.

Issued in Austin, Texas, on November 15, 1996.

TRD-9616608  
Bill Harvey  
Regulatory Coordinator  
Texas Parks and Wildlife Department  
Filed: November 15, 1996

◆ ◆ ◆

### Public Utility Commission of Texas

#### Assessment Percentages for Relay Texas

In accordance with Substantive Rule §23.56, subsection (h)(2), the new assessment percentages for funding of the intrastate portion of Relay Texas are as follows:

- 1) The percentage assigned to the Local Exchange Carriers (LEC's) is 94.2%.

2) The percentage assigned to other telecommunications utilities is 5.8%.

Commencing with the November 1996 Universal Service Fund (USF) billing statement which reflects September 1996 Relay Texas operations, these percentages will be used by the Texas Exchange Carriers Association (TECA) in the development of the Dual Party Relay Service assessments issued to the LEC's and other telecommunications utilities. The percentages will be reviewed and adjusted annually, pursuant to Substantive Rule §23.56, subsection (h)(2)(B).

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

TRD-9616510  
Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: November 14, 1996

◆ ◆ ◆  
**Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a 445 station addition to the existing PLEXAR-Custom Service for City of Laredo in Laredo, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for 445 Station Addition to Existing PLEXAR-Custom Service for City of Laredo in Laredo, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16638.

**The Application.** Southwestern Bell Telephone Company is requesting approval for a 445 station addition to an existing PLEXAR-Custom service for City of Laredo in Laredo, 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 18, 1996.

TRD-9616759  
Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: November 18, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a station addition to the existing PLEXAR-Custom Service for Austin Community College in Austin, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Station Addition to Existing PLEXAR-Custom Service for Austin Community College in Austin, Texas, Pursuant

to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16637.

**The Application.** Southwestern Bell Telephone Company is requesting approval for a station addition to an existing PLEXAR-Custom service for Austin Community College in Austin, Texas. The geographic service market for this specific service is the Austin, 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 18, 1996.

TRD-9616760  
Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: November 18, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of new PLEXAR-Custom Service for Bank One in Dallas, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for new PLEXAR-Custom Service for Bank One in Dallas, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16649.

**The Application.** Southwestern Bell Telephone Company is requesting approval for new PLEXAR-Custom service for Bank One in Dallas, Texas. The geographic service market for this specific service are the Dallas, Austin, San Antonio, and Houston, Texas areas.

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 18, 1996.

TRD-9616756  
Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: November 18, 1996

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of an Optional Features addition to the existing PLEXAR-Custom Service for Victoria ISD in Victoria, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Optional Features Addition to Existing PLEXAR-Custom Service for Victoria ISD in Victoria, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16636.



The Application. Southwestern Bell Telephone Company is requesting approval for a Optional Features addition to an existing PLEXAR-Custom service for Victoria ISD in Victoria, Texas. The geographic service market for this specific service is the Corpus Christi, 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 18, 1996.

TRD-9616757

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 18, 1996



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of new PLEXAR-Custom Service for Uvalde Consolidated ISD in Uvalde, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for new PLEXAR-Custom Service for Uvalde Consolidated ISD in Uvalde, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16635.

The Application. Southwestern Bell Telephone Company is requesting approval for new PLEXAR-Custom service for Uvalde Consolidated ISD in Uvalde, 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 18, 1996.

TRD-9616758

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 18, 1996



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a 445 station addition to the existing PLEXAR-Custom Service for City of Laredo in Laredo, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for 445 Station Addition to Existing PLEXAR-Custom Service for City of Laredo in Laredo, Texas, Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16638.

The Application. Southwestern Bell Telephone Company is requesting approval for a 445 station addition to an existing PLEXAR-Custom service for City of Laredo in Laredo, 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 18, 1996.

TRD-9616761

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 18, 1996

### Public Notice

On November 6, 1996, Southwestern Bell Telephone Company (SWB) and Metrolink Telecom, Inc. (Metrolink) collectively referred to as Applicants filed a joint application for approval of an interconnection agreement under the Federal Telecommunications Act of 1996 (FTA) (Public Law Number 104-104, 110 Stat. 56 (1996), (to be codified at 47 United States Code §§151 et. seq.) and the Public Utility Regulatory Act of 1995 (PURA95) (Texas Revised Civil Statutes Annotated article 1446c-0 Vernons Supp. 1996). The joint application has been designated Docket Number 16618. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 18 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 16618. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 10, 1996, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:

- a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, an Administrative Law Judge (ALJ) of the commission will determine whether to conduct further proceedings concerning the joint application. The ALJ shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The ALJ may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The ALJ may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call 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. All correspondence should refer to Docket Number 16618.

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

TRD-9616509

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 14, 1996



## 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

<b>FOR ISSUE PUBLISHED ON:</b>	<b>DEADLINES FOR RULES BY 10 A.M.</b>	<b>DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.</b>	<b>DEADLINES FOR OPEN MEETINGS BY 10 A.M.</b>
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

<b>FOR ISSUE PUBLISHED ON:</b>	<b>DEADLINES FOR RULES BY 10 A.M.</b>	<b>DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.</b>	<b>DEADLINES FOR OPEN MEETINGS BY 10 A.M.</b>
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

<b>FOR ISSUE PUBLISHED ON:</b>	<b>DEADLINES FOR RULES BY 10 A.M.</b>	<b>DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.</b>	<b>DEADLINES FOR OPEN MEETINGS BY 10 A.M.</b>
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

<b>FOR ISSUE PUBLISHED ON:</b>	<b>DEADLINES FOR RULES BY 10 A.M.</b>	<b>DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.</b>	<b>DEADLINES FOR OPEN MEETINGS BY 10 A.M.</b>
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>		



# Statement of Ownership, Management, and Circulation

(Required by 39 USC 3685)

1. Publication Title <b>Texas Register</b>		2. Publication Number 0 3 6 2 - 4 7 8 1								3. Filing Date 11/19/96	
4. Issue Frequency Twice weekly except: Feb. 23, March 15, Aug. 2, Dec. 3 and Dec. 31, 1996		5. Number of Issues Published Annually 100								6. Annual Subscription Price \$95.00	
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4) 1019 Brazos, P O Box 13824 Austin Texas (Travis County) 78711-3824								Contact Person Dan Procter Telephone (512) 463-5561			
8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer) 1019 Brazos, P O Box 13824 Austin Texas (Travis County) 78711-3824											
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)											
Publisher (Name and complete mailing address) Secretary of State, State Capitol, Austin Texas 78711-2887											
Editor (Name and complete mailing address) Dan Procter, P O Box 13824, Austin, Texas 78711-3824											
Managing Editor (Name and complete mailing address) Not applicable											
10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)											
Full Name					Complete Mailing Address						
Secretary of State					P O Box 13824						
Texas Register					Austin Texas 78711-3824						
Pursuant to Government Code, Title 10 Chapter 2002											
11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box <input checked="" type="checkbox"/> None											
Full Name					Complete Mailing Address						
Not applicable					Not applicable						
12. Tax Status (For completion by nonprofit organizations authorized to mail at special rates): (Check one) The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: <input type="checkbox"/> Has Not Changed During Preceding 12 Months <input type="checkbox"/> Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)											



13. Publication Title Texas Register		14. Issue Date for Circulation Data Below September 24, 1996	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		4041	3930
b. Paid and/or Requested Circulation	(1) Sales Through Dealers and Carriers, Street Vendors, and Counter Sales (Not mailed)	0	0
	(2) Paid or Requested Mail Subscriptions (Include advertiser's proof copies and exchange copies)	3572	3445
c. Total Paid and/or Requested Circulation (Sum of 15b(1) and 15b(2))		3572	3445
d. Free Distribution by Mail (Samples, complimentary, and other free)		100	101
e. Free Distribution Outside the Mail (Carriers or other means)		269	284
f. Total Free Distribution (Sum of 15d and 15e)		369	385
g. Total Distribution (Sum of 15c and 15f)		3941	3830
h. Copies not Distributed	(1) Office Use, Leftovers, Spoiled	100	100
	(2) Returns from News Agents	0	0
i. Total (Sum of 15g, 15h(1), and 15h(2))		4041	3930
Percent Paid and/or Requested Circulation (15c / 15g x 100)		90	89

16. Publication of Statement of Ownership  
 Publication required. Will be printed in the 11/22/96 issue of this publication.  
 Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner  
Dan Koester, Director Date 11-19-96

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including multiple damages and civil penalties).

**Instructions to Publishers**

1. Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.
2. In cases where the stockholder or security holder is a trustee, include in items 10 and 11 the name of the person or corporation for whom the trustee is acting. Also include the names and addresses of individuals who are stockholders who own or hold 1 percent or more of the total amount of bonds, mortgages, or other securities of the publishing corporation. In item 11, if none, check the box. Use blank sheets if more space is required.
3. Be sure to furnish all circulation information called for in item 15. Free circulation must be shown in items 15d, e, and f.
4. If the publication had second-class authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.
5. In item 16, indicate the date of the issue in which this Statement of Ownership will be published.
6. Item 17 must be signed.

Failure to file or publish a statement of ownership may lead to suspension of second-class authorization.

## How to Use the Texas Register

**Information Available:** The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

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

**Secretary of State** - opinions based on the election laws.

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

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

**Proposed Rules** - sections proposed for adoption.

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

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

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

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

**Open Meetings** - notices of open meetings.

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

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

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

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

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

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as ASCII files on 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).

**Update by FAX:** An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561 or (800) 226-7199.



Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

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Issue # \_\_\_\_\_

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100 to 150 users \$1000

151 to 200 users \$1250

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2 to 10 users \$50

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51 to 150 users \$150

151 to 300 \$200

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