Texas Register

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Texas Register

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

Information Available: The nine 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

Emergency Sections - sections adopted by state agencies on an emergency basis

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

Adopted Sections - sections adopted following a 30-day public comment period

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 accumulative 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 a 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 17 (1992) is cited as follows: 17 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: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code,* section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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Texas Register Publications

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Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filling or 20 days after filing. a proposal is not adopted or withdrawn six months after 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 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 113. Requirements for Dental Offices

• 22 TAC §113.5

The Texas State Board of Dental Examiners has withdrawn from consideration for permanent adoption a proposed new §113.5 which appeared in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6637). The effective date of this withdrawal is January 30, 1992.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201562 Mei Ling Clendennen
Administrative Secretary
Texas State Board of Dental Examiners

Effective date: January 30, 1992

For further information, please call: (512) 477-2985

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 325. Solid Waste Management

Subchapter P. Fees and Reports

Facilities

• 25 TAC §325.602 §325.603

The Texas Department of Health (department) has withdrawn the emergency effectiveness of amendments to §325.602 and §325.603, concerning fees and reports for solid waste management facilities. The text of the emergency amendments appeared in the November 26, 1991, issue of the *Texas Register* (16 TexReg 6837). The effective date of this withdrawal is 20 days after filing.

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201548 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: February 21, 1992

For further information, please call:(512) 458-7271

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

• 34 TAC §3.573

The Comptroller of Public Accounts has withdrawn from consideration for permanent adoption a proposed new §3.573 which appeared in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7706). The effective date of this withdrawal is January 31, 1992.

Issued in Austin, Texas, on January 31, 1992.

TRD-9201501 Anne Hildebrand
Agency Liaison
Comptroller of Public Accounts

Effective date: January 31, 1992

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

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Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.2, §113.10

The General Services Commission adopts amendments to §113.2, and §113. 10, concerning definitions and delegated purchases, without changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6177).

The sections are adopted to implement changes to Texas Civil Statutes, Article 601b, Article 3, which increase both the delegated purchase amount for state agencies and the purchase amount for which competitive bidding is required, and require agencies to maintain bidder's lists and solicit bids from all eligible bidders for purchases which exceed $5,000.

The sections increase the delegated purchase amount for state agencies from $1,500 to $5,000, increase the amount for which competitive bidding is required from $250 to $1,000, and prohibit the commission requiring unrelated purchases to be combined in order to exceed the specified dollar limits. Agencies making purchases for which competitive bidding is required must maintain a bidders list and solicit bids from all eligible bidders for purchases which exceed $5,000.

Several comments were received regarding adoption of the amendments. One commenter opposed the adoption of the amendments to both sections, stating that they would have a negative impact on small businesses in the state by decentralizing the procurement process for purchases under $5,000, thus making it more difficult for small businesses, especially those located outside of Austin, to sell to the state. The same commenter also stated that the amendments would result in an increased workload for state agencies and additional costs to the state's taxpayers due to lack of competition and increased administrative expenses. Other commenters were in favor of the adoption of the amendments. Two commenters stated simply that they were in favor of the revised thresholds, while the others specifically stated their approval of permitting informal bidding for purchases between $1,000 and $2,500.

The Texas Rehabilitation Commission, University of Texas at Austin, Texas Department of Criminal Justice-Institutional Division, Texas Parks and Wildlife Department, University of Texas Health Science Center at San Antonio, and Texas Youth Commission commented in favor of the adoption and the Texas Association of Procurement Centers, Inc. commented against.

The commission disagrees with the comments opposing the increased threshold for delegated purchases as the increase is mandated by statute.

The amendments are adopted under Texas Civil Statutes, Article 601b, §3 01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201487 Judith M. Porras
General Counsel
General Services Commission

Effective date. February 20, 1992

Proposal publication date· November 1, 1991

For further information, please call· (512) 463-3446

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Purchasing

• 1 TAC §113.4

The General Services Commission adopts an amendment to §113 4, concerning bid lists, with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6178)

The section is amended to comply with the provisions of Texas Civil Statutes, Article 601b, and specifically the newly enacted §3.101 thereof.

The section requires the commission to develop a standard bid list application form which may be used by agencies to establish an agency bid list, requiring agencies to establish and maintain agency bid lists, and authorizes charging a fee to recover costs Agencies are also authorized to use the commission's bid list as their own.

Three parties submitted comments regarding the amendment to the section One commenter recommended that a vendor's placement of a buyer agency on credit hold or shipment hold without 10 days prior written notice should be added a factor allowing removal from the bid list. The same commenter objected to the amendment to subsection (b)(1)(H) which increases the number of bid invitations to which a bidder fails to submit a bid prior to removal from the bidder list The objection to the amendment is apparently based on a misunderstanding regarding the nature of a "failure to respond" as used in the section; the commenter characterizes such failures as "offense occurrences".

Other comments were in favor of the amendment to the section, but included additional comments or questions One commenter inquired whether a vendor which has been removed from the lit and is subsequently granted reinstatement would be charged a fee for such reinstatement Another commenter questioned the utility of allowing an agency to develop its own form but prohibiting its use in lieu of the form developed by the commission.

The University of Texas at Austin, and Texas Department of Criminal Justice-Institutional Division commented in favor of the adoption and the University of Texas MD Anderson Cancer Center commented against

The commission does not concur with the suggestion of an additional reason for removing a vendor from the bidders list, for the reason that the circumstance described would ordinarily constitute a breach of contract on the part of the vendor and would thus be covered by existing provisions, namely, Texas Civil Statutes, Article 601b, §3.11(e)(6)

The commission also does not concur with the suggestion that removal or suspension occur after four failures to respond to bid invitations, rather than the proposed eight nonresponses The commenter appears to have confused the failure to respond to a bid invitation with failing to comply with a material provision in a contract. The commission takes the position that bidders which have paid a fee to be placed on the list should be allowed a longer period of time than previously given to remain on the list notwithstanding their failure to bid. The commission has conformed subsection (e) concerning the development of bid list applications to the state. This section does not prohibit agencies' due of their own forms and reflects the requirements of statutes.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3 01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3

§113.4. Bid Lists, Conditions Applicable to Both Open Market and Contract.

(a) Requirements for bidders list. A vendor may be considered for the bidder's mailing list by complying with and meeting the following procedures and requirements.

(1) (No change.)

(2) A vendor may be considered for the bidder's mailing list by completing and returning to the commission the bidder's application form which is furnished with the purchase of the commodity book and remitting a check, payable to the commission, in the amount of $75, in payment of the bid list annual subscription fee. This fee, less a $15 handling charge, is refundable only in event the applicant is not accepted for placement on the list of bidders. The subscription fee is due and payable annually upon notice from the commission. Annual notification will be made in the anniversary month of initial enrollment on the bid list.

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

(b) Removal from bidders list.

(1) A bidder may be removed or temporarily suspended from the bid list for one or more of the following reasons:

(A)-(E) (No change.)

(F) failure to pay or unnecessary delay in paying damages assessed by the commission;

(G) (No change.)

(H) failure to submit bids to the commission's invitation to bid. Removal from the list of the affected class or item will automatically follow the expiration of 15 days after bidder's receipt of notice from the commission, unless the bidder notifies the commission in writing, with rationale acceptable to the commission, that it wishes to remain on the list when a failure to respond:

(i) occurs on each of eight consecutive open market invitations concerning the affected class or item; or

(ii) (No change.)

(I) failure to remit the annual bid list subscription fee;

(J) receipt of documentation acceptable to the director for purchasing, of a bidder's inability to provide the commodity or service for which the bidder is enrolled on the bid list. In case of inappropriate enrollment, bid list removal will include only the commodities or services which the bidder is unable to provide;

(K) other factors listed in Texas Civil Statutes, Article 601b, §3.11.

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

(c) Notice of surplus property sales. Applicants to receive notice of surplus property sales by the commission under Texas Civil Statutes, Article 601b, Article 9, may apply through the bid list clerk, General Services Commission. No additional requirements for this list are necessary. See §113. 73 of this title (relating to Sale and Disposition of Surplus and Salvage Property) for provisions relating to removal from bid lists for surplus property.

(d) (No change.)

(e) Standard bid list application form. The commission shall develop a standard bid list application form and offer it to all state agencies, for use in accepting applications to an individual agency bid list. A state agency is not prohibited from developing and using its own application form but such forms shall not be required in addition to or in lieu of the standard registration form developed by the commission.

(f) Bidders list and annual register. Each state agency will maintain a bidders list and annually register on the list the name and address of each vendor that applies and is accepted for registration in accordance with rules adopted by the agency. Agency rules should also provide procedures for maintaining the bid list and for removing inactive bidders from the list. A state agency may charge bid list applicants a fee for registration on the bid list and may charge an annual renewal fee in an amount designed to recover the agency's costs in developing and maintaining its bidders list and in soliciting bids or proposals. An agency should set the amount of the fees by rule. An agency electing to use the bid list maintained by the central purchasing division of the commission, or a portion thereof, satisfies its statutory requirement to maintain an agency bid list if the portion selected reasonably covers the geographic area of the agency's business activity.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201489 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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• 1 TAC §113.6

The General Services Commission adopts an amendment to section §113.6, concerning bid evaluation and award, with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6179).

The section is amended to comply with the provisions of Texas Civil Statutes, Article 601b, and specifically the newly-enacted §§3.202, 3.211, 3.212, and 3.32 thereof.

The section lists factors that must be considered when evaluating competitive sealed proposals or purchasing electrical items, and implements preferences for energy efficient products and rubberized asphalt paving materials.

Two parties submitted comments regarding the amendment to the section. One commenter pointed out an apparent typographical error in subsection (b)(9), stating that the language should read "as to quantity and quality" instead of "as to quantity and quantity." The other commenter stated concerning subsection (c)(4)(E) that the itemization of suggested factors for evaluation of an RFP makes it easier to identify what factors could and should be used

The University of Texas at Austin and Texas Department of Transportation commented in favor of the adoption.

The commission concurs with the comments received and subsection (b) is changed as necessary to correct the identified error.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3, which provides the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

§113.6. Bid Evaluation and Award, Conditions Applicable to Both Open Market and Contract.

(a) (No change.)

(b) Award.

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

(9) The commission shall give a preference to energy efficient product if the products meet state requirements a to quantity and quality as set forth in advertised specification and are equal to or less than the cost of other products offered in the responses to invitation for bids or request for proposals. This preference shall be implemented by evaluating the energy usage of product offered and considering the cost of energy usage over the expected life of the equipment. The methodology for evaluation of the energy costs shall be included in the specifications for the invitation for bids or the request for proposals.

(10) The commission may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material, if the cost as determined by

life-cycle cost benefit analysis does not exceed by more than 15% the bid cost of alternative paving materials.

(c) Negotiations of contracts.

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

(4) Pursuant to the provisions of Chapter 390, 70th Legislature, 1987, amending Texas Civil Statutes, Article 601b, §3. 021, the commission may acquire telecommunications devices, systems, or services or any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software by following a procedure using competitive sealed proposals subject to the following conditions and procedures.

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

(E) At a minimum, the RFP shall include a statement of work describing the item or service desired; the criteria that will be used in evaluating proposals; and a statement as to when and in what form prices are to be submitted. The evaluation criteria shall be described in a plan of evaluation which identifies evaluation factors developed in relation to their importance to the proposed work or project. The criteria or standards shall measure how well a proposal meets desired performance requirements. Standards should seek to match the evaluation of proposals against objective norms rather than comparing one proposal against another. The evaluation process shall also include price and cost analysis. Factors such as installation costs, the overall life of the system or equipment, the cost of acquisition, operation, and maintenance of hardware included with, associated with, or required for the system or equipment during the state's ownership or lease, the cost of acquisition, operation, and maintenance of software included with, associated with, or required for the system or equipment during the state's ownership or lease, the estimated cost of supplies, the estimated costs of employee training, the estimated cost of additional long-term staff needed, and the estimated increase in employee productivity, shall be considered by the commission when determining which proposal is most advantageous to the state. Only criteria as designed in the solicitation may be considered in evaluation of award. An evaluation team may be formed to evaluate and discuss proposals. The commission shall invite requisitioning agency participation on the evaluation team.

(F)-(G) (No change.)

(d) Safety standards for electrical items. The commission or another state agency may not purchase an electrical item unless the item meets applicable safety standards of the federal Occupational Safety and Health Administration (OSHA).

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201486 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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• 1 TAC §113.9

The General Services Commission adopts an amendment to §113.9, which pertains to term contracts, without changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6180).

The amendment is necessary to ensure compliance with recently enacted provisions of Texas Civil Statutes, Article 601b, §3.181.

The section requires the commission to study at least one service annually to determine the benefits of a state-wide or regional contract. State-wide or regional contracts are not required for services that more than five bidders are willing to provide.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201490 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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• 1 TAC §113.11

The General Services Commission adopts an amendment to §113.11, concerning Texas Department of Criminal Justice purchases, with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6180).

The section is amended to comply with technical amendments to Texas Civil Statutes, Article 601b, §3.23, and Texas Government Code, §§497.021 et seq.

The section clarifies the requirement that state agencies purchase supplies, materials, and/or equipment produced by the Texas Department of Criminal Justice, sets forth exceptions to this mandatory requirement, describes the manner in which such orders are to be handled, describes the procedure for certifying that goods can be purchased elsewhere at a lower price, and allows state agencies to obtain an informal or formal quotation and issue a purchase order to the Texas Department of Criminal Justice for goods that are not included in an established contact, the cost of which does not exceed $5,000.

One party submitted comments regarding the amendment to the section. The commenter asked whether an agency will be permitted to purchase from other sources without obtaining formal or informal bids if the Texas Department of Criminal Justice cannot supply the goods. No other comments were received.

The University of Texas at Austin commented in favor of the adoption.

The commission responds to the question raised by the commenter that purchases from other sources, in cases where the Texas Department of Criminal Justice cannot supply the goods, must comply with applicable competitive bidding rules and statutory requirements.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

§113.11. Texas Department of Criminal Justice Purchases. The commission is authorized by Texas Civil Statutes, Article 601b, §3.23, and Texas Government Code, §§497.021 et seq, to enter into contracts with the Texas Department of Criminal Justice for the purchase of supplies, materials, and/or equipment produced by the Texas Department of Criminal Justice for use by other state agencies. When such contracts have been negotiated, the state agencies will be so notified by the issuance of catalog pages listing the items approved for purchase. Orders for these supplies will be placed with the Texas Department of Criminal Justice in the same manner as other contract orders are handled. It is mandatory that all such items be purchased from the Texas Department of Criminal Justice unless an agency submits written evidence, acceptable to the commission that an item available from the Texas Department of Criminal Justice will not adequately serve its needs or the institutional division of the Texas Department of Criminal Justice determines that the division is unable to fill a requisition for an article or product. A state agency is not required to purchase from the

Texas Department of Criminal Justice if they determine the goods or articles can be purchased elsewhere at a lower price, and the commission so certifies. Certification will be accomplished by the commission accepting and processing an agency requisition, or approval of payment on a purchase accomplished under delegated authority. Items which are not included in an established contract may be purchased directly from the Texas Department of Criminal Justice using an informal or formal quotation and issuing a proper purchase order for amounts not to exceed $5,000.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201491 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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Purchase of Alternative Fuel Vehicles

• 1 TAC §113.25

The General Services Commission adopts an amendment to §113.25, without changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6181).

The amendment is necessary to ensure compliance with recent amendments to Texas Civil Statutes, Article 601b, §3.29(a).

The section will increase the horsepower of vehicles a state agency may purchase or lease from 145 SAE horsepower to 160 SAE net horsepower.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201494 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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Inspection

• 1 TAC §§113.51, 113.52, 113.56

The General Services Commission adopts amendments to §§113.51, 113.52, and 113.56, concerning inspections and testing. Section 113.52 is adopted with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6181). Section 113.51 and §113.56 are adopted without change and will not be republished.

The sections are amended comply with recent amendments to Texas Civil Statutes, Article 601b, §3.17.

The sections require inspection and testing of all costly purchases, provide procedures for such inspections, require the commission to review existing contracts for recycling waste produced at state buildings under the commission's control, permit removal of vendors from the bid list for complaints, and make technical corrections.

Two parties submitted comments regarding the amendments to the sections. One commenter stated generally that it supported more intensive inspection and testing of products. The other commenter suggested that the term "costly" in §113.51 needs clarification, stating that the interpretation of what is costly is left up to the reader. The same commenter stated with regard to §113.52(b) that the rule would have a severe impact on agency operations in terms of receipt time if the commission intends to inspect every item the agency rejects for not meeting specifications. The commenter further stated that the same provision would severely affect vendors if items are held for a lengthy amount of time for a follow-up inspection. Finally, the commenter stated that the term "repeated complaints" should be clarified.

The Texas Department of Criminal Justice-Institutional Division commented in favor of the adoption and the Texas Department of Transportation commented against.

The commission does not concur with the comment that the term "costly" should be clarified. Flexibility of interpretation is required in order to account for the assessment of risk to the state that a given transaction represents. Such risk could arise not only from the cost of a particular item, but also from the complexity of the specifications for the item, the volatility of the market supplying that item, or other factors. Describing such purchases merely in terms of an arbitrary dollar threshold would not adequately provide for the impact of those factors upon the cost of an item. The commenter correctly states, however, that the interpretation of what is costly is left to the reader. This is consistent with the commission's approach, as seen in §113.52(b), wherein agencies are required to perform initial inspections and testing of such purchases. Further clarification of the term would interfere with the discretion of an agency in performing its responsibilities under these sections. The commission concurs with the comments regarding §113.52(b) pertaining to follow-up inspections. The section has been amended accordingly to eliminate the requirement that the specifications and inspection section conduct follow-up inspections in all cases, and now refers to such follow-up inspections in permissive rather than mandatory language. The commission does not concur with the comment pertaining to §113.56(d) requesting clarification of "repeated complaints." Although "repeated" means more than one, it would be inadvisable to establish a threshold number of complaints which would be regarded as constituting repeated complaints. The evaluation of such complaints involves the exercise of professional judgment in determining whether the complaints are warranted, considering the presence or absence of mitigating factors, and deciding whether sanctions are appropriate. Such an exercise of discretion requires more flexibility than would be possible under a restrictive definition of repeated complaints.

The amendments are proposed under Texas Civil Statutes, Article 601b, §3.01, which provides the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

§113.52. Selection of Items for Inspection and/or Testing.

(a) (No change.)

(b) State agencies shall be responsible for the initial inspection and testing of all costly purchases. Inspection and testing will be done in accordance with instructions issued by the Specifications and Inspection Section of the General Services Commission. The Specifications and Inspection Section may devise appropriate form(s) as necessary to assist the agencies in carrying out this duty. In addition to random inspections, the Specifications and Inspection Section may conduct follow-up inspections of purchases which fail initial agency inspections to verify if specifications are met. The Specifications and Inspection Section will coordinate with the assigned purchaser as required to carry out these duties.

(c) As a part of the standards and specifications program, the commission staff shall review existing contracts in effect on and after September 1, 1991, for recycling waste produced at state buildings under the control of the commission. Such review shall be made to ensure that all contracted recycling services meet contract specifications.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201492 Judith M. Porras
General Counsel
General Services Commission

Effective date. February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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Surplus Property Sales

• 1 TAC §113.76

The General Services Commission adopts new §113.76, without changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6181).

The new section is necessary to ensure compliance with recent amendments to Texas Civil Statutes, Article 601b, §9.11.

The section provides a method for determining the fair market value of chairs which were used, and may be purchased, by an elected or appointed officer and executive heads of agencies.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 601b, §9.04, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 9.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201493 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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Competitive Cost Review

• 1 TAC §§113.93, 113.95, 113.99

The General Services Commission adopts amendments to §§113.93, 113.95, and 113.99, concerning the competitive cost review program. Section 113.95 is adopted with changes to the proposed text as published in the November 1, 1991 issue of the *Texas Register* (16 TexReg 6182). Section 113.93 and §113. 99 are adopted without changes and will not be republished.

The sections are amended to comply with recent amendments to the provisions of Texas Civil Statutes, Article 601b, Article 13.

The sections will expand the reporting requirements of agencies, identify the agencies' internal auditors as program coordinators, and state the duties of the commission with regard to assisting agencies and conducting its own comparative cost study.

Two parties submitted comments regarding the amendments to the sections. One commenter requested clarification that the December 1 deadline cited in §113. 95(d) applies to the time for submission of the schedule rather than the time by which approval must be obtained. The same commenter recommended that the instructions referred to in §113.95(e) include, or consist entirely of, the "Competitive Cost Review Cost Analysis Guide" issued by the state auditor. In addition, the commenter noted the inadvertent omission of the step of requiring the agency to submit the completed management study to the commission for approval, and recommended including language correcting the omission. The other commenter made a number of comments, some of which were global and some which pertained to specific sections. Concerning the competitive cost review rules as a whole, the commenter stated that notwithstanding the commission's determination that there would be no fiscal implications for state or local government, the experience of the agency in question was that significant resources ($300,000) had been expended while achieving no significant savings to the agency. The commenter stated that additional requirements specified by House Bill 39 and the proposed rule changes would increase the amount of resources spent in complying with the statute. In addition, the commenter questioned when the changes would become effective, and inquired as to what legislation is currently in effect.

Concerning §113.95(a), the commenter stated that it had no written definition of what the term "coordinate" entails, and indicated its concern that the internal auditor's review functions described in §113.95(f) may constitute a conflict of interest with such coordinating activity. The commenter also stated that sufficient resources had not been appropriated to allow its internal auditor to fully implement the statutory provisions. With regard to §113.95(a), the commenter remarked that the development of a management study sufficiently comprehensive to accommodate private-sector practice would require additional resources to develop such information. Concerning §113.95(b), the commenter stated that additional staff resources would be required to provide information in the format prescribed by the state auditor's guidelines. The commenter requested guidance as to the format or details required for the report pertaining to commercial activities and related information referred to in §113.95(c), and suggested that the commission or the state auditor provide a mailing list and mailing labels for use in delivering the report to the required parties. The commenter also suggested that the deadlines of November 1 and December 1 (specified in §113.95(b) and §113.95(d), respectively) be adjusted to accommodate reasonable time lines for requesting, receiving, and incorporating comments into finalized document form. The commenter also noted that no time line was established for obtaining the commission's approval of management studies, and thus suggested that such review and approval process could span well over a fiscal year period. Regarding §113.99(a), the commenter stated that it was unclear whether the commission's comments and suggestions pertaining to the inventory of commercial activities were to be received and incorporated prior to the agency requesting board approval. The commenter stated that the phrase "timely study" as used in §113.99(b) was unclear in terms of actual time, and that if not further defined it should not be an item of review for compliance with the commission Concerning the provision in §113.99(e) excluding measures not contained in the management study from consideration, the commenter stated that such exclusion would be detrimental to the comparison process. As an alternative, the commenter suggested language which would encourage agencies to include all relevant information into the management study. Finally, with respect to §113.99(f), the commenter suggested that the agency coordinator be included in the specified distribution list, and that the agency coordinator be directly advised of any other communications pertaining to competitive cost review activities.

The Texas Department of Transportation and Texas Department of Mental Health and Mental Retardation commented against the adoption of the amendments.

The commission does not concur that there will be fiscal implications for state government as a result of enforcing or administering the sections. The sections implement newly-enacted statutory requirements which are in addition to or in lieu of previously existing statutory requirements. The comments made in this regard pertain to past expenditures which could not have been made as a result of the adoption, enforcement, or administration of these sections. The commission does not concur that a conflict of interest results from an internal auditor's duties to coordinate activities, referred to in §113.95(a), and to review cost estimates, as required in §113.95(f). Both duties are required by statute, which must be read so as to give effect to both.

The comments raised in response to §113.95(a), to the effect that the management study must be sufficiently comprehensive to accommodate private-sector interests, apparently refers to the portion of the rule which is being deleted. As such, it is not germane to the proposed amendments.

The comment pertaining to §113.95(b) that additional resources would be required to provide information in the format prescribed by the state auditor also refers to the portion of the rule being deleted. As such, the comment is not germane to the proposed amendment.

The commission disagrees that additional guidance must be given to agencies regarding the format for reporting information described in §113.95(c). The information may be reported in a manner determined by the agency in its discretion; additional requirements or prescribed formats would therefore hamper agencies' efforts to comply with. The commission also disagrees that further identification of the sources for receipt of the information is necessary; the intended recipients are adequately identified and are consistent with statutory requirements. The references to November 1 and December 1 deadlines pertain to statutory provisions which the commission is required by law to implement.

The commission concurs with the comment that the deadline of December 1 cited in §113 95(d) applies to the time for submission of the schedule, and amends the section accordingly

The commission concurs with the comments regarding §113.95(e) that the instructions should include the state auditor's guidelines, and that explicit language requiring the agency to submit the completed management study for approval should be included. The commission amends the section accordingly.

The commission acknowledges that no time line was established in §113 95(f) for obtaining the commission's approval of management studies, as none is provided in the statute. The commission disagrees, however, that this should be construed as allowing unreasonable delays in such approvals.

The commission disagrees that the language in §113.99(a) is unclear with respect to the agency's receipt and incorporation of comments and suggestions relative to the inventory of commercial activities. The commission is to make comments and suggestions; whether such suggestions or comments are incorporated is within the discretion of the agency. The commission does not concur with the comment regarding the phrase "timely study" in §113.99(b) The commission disagrees that there is a need for clarification "in terms of actual time" of what is meant by this phrase The phrase is intended to allow flexibility for the convenience of the agency as well as the commission. Moreover, the commission cannot agree to waive any item of review if such is required by statute.

The comment concerning provisions in §113 99(e) excluding certain measures from consideration pertains to language previously adopted by the commission, and is thus not part of proposed amendments subject to agency review and comments. It should be noted, however, that the requirements listed in §113 95(e) for management studies are not exclusive and thus may contain the relevant information to which the commenter refers

The comment regarding §113.99(f) also pertains to language previously adopted by the commission, and is thus not part of proposed amendments subject to agency review and comments.

With respect to the comment concerning the "earliest date of adoption," the commission states that the changes are in effect as of the following date of certification is shown. In response to the inquiry as to what legislation is in effect, the legislation is that found in Texas Civil Statutes, Article 601b, Article 13.

The amendments are adopted under Texas Civil Statutes, Article 601b, §§3.01, 13 03, and 13.05, which provide the General Services Commission with the authority to promulgate rules to accomplish the purposes of Article 3 and Article 13.

§113.95. State Agency Responsibilities.

(a) Each biennium, state agencies subject to the competitive cost review program shall conduct cost review studies of their commercial activities. If the agency has an internal auditor, the internal auditor shall coordinate the activities of the agency as required by the statute. The agency shall adopt rules necessary to implement the statute including conducting management studies and developing in-house cost estimates.

(b) By November 1 of each year the subject agencies shall identify their commercial activities and develop a schedule to study the commercial activities identified. For each commercial activity identified, the agency shall quantify in measurable units the amount of the activity performed and indicate the amount of funds budgeted for the activity by the agency.

(c) The agency head shall notify the state auditor, the Legislative Budget Board, Governor's Office of Budget and Planning, Senate Finance Committee, House Appropriations Committee, and the commission of the commercial activities, workload indicators, budget information, and study schedule for review and comment.

(d) The agency shall then submit its schedule and activity inventory to its governing body by December 1 of each year for approval. The agency shall conduct the management study of the functions identified after approval of the governing body.

(e) The management study shall be conducted in accordance with the "Competitive Cost Review Analysis Guide" issued by the State Auditor's office, and instructions issued by the commission. The management study shall be forwarded to the commission for review and approval. As a minimum, a management study must contain:

(1) a description of the agency function;

(2) an analysis of the quality and quantity of the work of the agency in relation to that function; and

(3) a description of any efficiency initiatives that the agency could implement to perform the function more efficiently.

(f) After commission approval of the completed management study, the agency shall estimate the total cost to perform the function. The cost estimate shall be prepared in accordance with procedures and instructions contained in the current edition of the "Competitive Cost Review Cost Analysis Guide" published by the office of the State Auditor. The agency in-house cost estimates shall be submitted to its internal auditor for review before forwarding the cost estimate to the state auditor for approval.

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

Issued in Austin, Texas on January 30, 1992.

TRD-9201488 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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Chapter 123. Facilities, Planning, and Construction

Building Construction Administration

• 1 TAC §§123.13, 123.15, 123.18

The General Services Commission adopts amendments to §§123.13, 123.15, and 123.18. Section 123 15 is adopted with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6183). Section 123.13 and §123.18 are adopted without changes and will not be republished.

The sections are adopted to clarify the exclusions of certain construction projects from the provisions of Texas Civil Statutes, Article 601b, Article 5 and to define procedures for the selection of architects/engineers and bidding, in compliance with Article 601b, Article 5.

The amendment to §123.13 excludes certain repair and rehabilitation projects on state-owned buildings and leased buildings if such work is not required to be provided by the lessor. The amendment to §123.15 sets forth architect/engineer selection procedures and criteria and allow firms 30 days to prepare and submit information concerning their qualifications and experience. The amendment to §123.18 affords construction bidders 30 days to submit bids, except for emergencies or to prevent undue cost to a state agency; what constitutes an emergency is also defined.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 601b, §5.15, which authorize the General Services Commission to promulgate rules to necessary to accomplish the purposes of Article 5.

§123.15. Selection of Architect/Engineer for Professional Services.

(a) Selection of an architect/engineer for professional services shall be in accordance with Texas Civil Statutes, Article 601b, §5.22.

(b) A using agency recommendation on an architect/engineer for a project should accompany the project request.

(c) When funds are appropriated for a construction project directly to the General Services Commission or when the us-

ing agency for which project funds are appropriated declines to make recommendations on an architect/engineer for a project, the following procedures shall be used for the architect/engineer selection.

(1) (No change.)

(2) The commission recognizes that professional services required for each project will differ. Criteria developed from the project description will be used by the committee to formulate the list of architect/engineers for the comparative selection based ranking of the architect/engineers. Such criteria includes, but is not necessarily limited to, considerations such as project type, size, complexity, the ability and capacity of the architect/engineer for timeliness, skill, creative ability, and technical and professional knowledge. The project description will provide a basis for the list of minimum qualifications that a prospective architect/engineer should possess in order to provide professional services on the project.

(3) The selection committee, where possible, will compile a list of at least 10 firms that meet or exceed the minimum qualifications for further consideration. It is recognized by the commission that 10 firms is an optimum number of firms that could effectively be considered without causing undue administrative delay in the project. More than 10 firms may actually meet the minimum requirements established for the project, but no additional firms will be considered unless the selection committee decides it can do so without undue administrative delay in the project.

(A) Upon determination by the commission that a project for repair, rehabilitation, or renovation is of limited scope for professional services, the commission may consider a lesser number of architect/engineer firms for selection consideration.

(B) Selection of an architect/engineer firm for providing emergency services will be made following a determination by the commission that an emergency project warrants professional services, and that professional services are required in an urgent time frame which does not permit normal selection committee procedures to occur; provided that only firms that have had previous experience on state construction projects shall be considered.

(4) (No change.)

(5) Firms selected for consideration will be notified and given a brief description of the project and those interested in further consideration will be scheduled for an interview with the selection committee. Individuals or firms shall be allowed a 30-day response time period for preparation and submission of information which presents specific project experiences and qualifications to the commission.

(6)-(7) (No change.)

(8) The firm rated highest by the committee will then be offered the project and an agreement negotiated for the work included. Should this firm and the commission fail a mutually acceptable agreement, the project will then be offered to the firm rated second highest. In the unlikely event that an agreement cannot be reached with the second choice, a similar procedure will be followed with the third highest rated firm. In no event will an agreement be offered to a firm which the committee determines fails to satisfy the minimum determinates for selection considerations.

(9) After an architect/engineer selection is completed, the firms interviewed but not selected will be advised of the selection committee determination.

(10) Items of consideration in making the initial selection will include, but not necessarily be limited to, the following:

(A) architect/engineer's experience with projects similar in character and or scope for which the architect/engineer is being considered;

(B) location of architect/engineer's principal business office relative to the project site;

(C) compatibility between the number of employees of the architect/engineer firm and size and complexity of the project;

(D) (No change.)

(E) current professional service work load and capability of the architect/engineer to commence proceeding with the project at reasonable speed;

(F) (No change.)

(G) registration status of persons engaged in the practice of professional architectural or engineering services.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201483 Judith M. Porras
General Counsel
General Services Commission

Effective date: February 20, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-3446

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TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 101. General Administration

• 7 TAC §101.4

The State Securities Board adopts an amendment to §101.4 concerning examination of records without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6985).

The amendment sets forth in the Agency's rules the Agency's procedures for addressing requests under the Texas Open Records Act.

The amendment serves as a guide for persons who inquire regarding how requests under the Texas Open Records Act are addressed by the Agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201387 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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• 7 TAC §101.5

The State Securities Board adopts new §101.5 concerning the cost of copies of public records without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6986).

The new section provides notice of the costs for certified and noncertified photocopied reproductions of Agency records.

The new section reflects the costs recommended by the General Services Commission for certified and noncertified Agency records.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201386 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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Chapter 115. Dealers and Salesmen

• 7 TAC §115.1

The State Securities Board adopts the an amendment to §115.1 concerning availability of records, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6986).

The section reflects in the Agency's rules a requirement regarding availability of records.

The section reflects the requirement that applicants for dealer and/or investment adviser registration execute an agreement to make records available to the commissioner or his representative.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201382 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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• 7 TAC §115.4

The State Securities Board adopts an amendment to §115.4 concerning evidences of registration without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6986).

The amendment is needed in order to comply with House Bill 1393, 72nd Legislature, Regular Session, 1991 concerning late renewal of licenses by certain military personnel and to set forth recently increased fees.

The amendments sets forth a new procedure to allow certain persons on active duty in the armed forces the renew their registration without having to pay a penalty for late renewal and reflects fee increases set forth in House Bill 11, 72nd Legislature, 1st Called Session, 1991.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201381 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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Chapter 133. Forms

• 7 TAC §133.1

The State Securities Board adopts an amendment to §133.1 concerning the Texas Open Records Act request, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6987).

The amendment provides an updated form for persons who make requests under the Texas Open Records Act.

The amendment provides a form for Texas Open Records Act Requests.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201385 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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• 7 TAC §133.2, §133.3

The State Securities Board adopts the repeal of §133.2, and §133.3 concerning request for pubic records in storage form and open records act request without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6987).

The repeals are needed in order to eliminate unnecessary forms.

The repeals eliminate unnecessary forms.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201384 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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• 7 TAC §133.15

The State Securities Board adopts an amendment to §133.15 application for registration as an individual securities dealer or investment adviser.

The amendment is adopted without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6988).

The amendment is needed to reflect current filing fees.

The form reflects the increased fee contained in House Bill 11, 72nd Legislature, 1st Called Session, 1991.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201380 Richard D Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call. (512) 474-2233

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• 7 TAC §133.17, §133.19

The State Securities Board adopts new §133.17 concerning multiple registration-undertaking to disclose affiliations; and an amendment to §133.19 concerning application for registration of a corporation or partnership as a securities dealer or investment advisor or as a securities salesman without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6988), however there was one change made to the form itself in §133.17 in order to make it clear that affiliations include situations in which persons or business organizations own, of record or beneficially, any interest amounting to 10% or more of the voting control in any registered entity with whom the registrant is affiliated.

Section 133.17 provides a standardized form to make it easier for applicants for multiple registration to undertake to disclose certain affiliations in accordance with 7 TAC §115.1(e)(1)(A).

Section 133.19 is needed to reflect current filing fees.

Section 133.17 creates a form upon which to make the required undertaking

The form in §133.19 reflects the increased fee contained in House Bill 11, 72nd Legislature, 1st Called Session, 1991.

No comments were received regarding adoption of the amendment and new section.

The new section and amendment are adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201376 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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• 7 TAC §§133.20, 133.23, 133.24

The State Securities Board adopts amendments to §133.20, 133.23, and 133 24 concerning forms, without changes to the proposed text as as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6988).

Section 133.20 is needed to reflect current filing fees. Section 133.23 provides a new form to make it easier for applicants to certify that Texas franchise taxes either are not owed or that payment of such taxes has been made, Section 133.24 is needed to reflect current filing fees.

In §133 20, the form reflects the increased fee contained in House Bill 11, 72nd Legislature, 1st Called Session, 1991. Section 133.23 creates a new form upon which an applicant may set forth the franchise tax related in formation. In §133.24, the form reflects the increased fee contained in House Bill 11, 72nd Legislature, 1st Called Session, 1991.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new section are proposed under Texas Civil Statutes, Article 581, §28.1, which provide that the board may make or adopt rules and regulations governing registration statements, applications, notices, and reports, and the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

Issued in Austin, Texas, on January 28, 1992.

TRD-9201378 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 19, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 474-2233

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TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 101. Dental Licensure

• 22 TAC §101.1

The Texas State Board of Dental Examiners adopts an amendment to §101.1, concerning general qualifications, with changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6629).

The board adopts this rule to provide further clarification of dental examination procedures and to eliminate duplicative language in the rule

The section states the general qualifications for any person desiring to practice dentistry in the State of Texas.

Comments received regarded suggested word changes for further clarification of the rule

The name of a group or association making comments for the section was as followed. Texas Department of Health. The agency agrees with comments.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§101.1. General Qualifications.

(a) (No change.)

(b) An applicant for licensure from the Texas State Board of Dental Examiners shall:

(1) make written application to the board which shall indicate compliance with all requirements of said application to the board. Written application shall be received not later than 30 days prior to the announced examination date;

(2) present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or if the applicant has not completed the last term of dental school prior to making application, the dean of the accredited school shall certify that the applicant is a candidate for graduation to occur prior to the examination date;

(3) present proof of having passed the examination for dentists in its entirety given by the National Board of Dental Examiners;

(4) present proof of successful completion of a current course in basic life support given by the American Heart Association or the American Red Cross prior to the applicant's examination for licensure;

(5) pay an examination and licensure fee as required by law and the rules and regulations of the board; and

(6) satisfactorily pass either an oral, written, or clinical practical examination or any combination thereof as may be determined by the board.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201462 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Chapter 103. Dental Hygiene Licensure

• 22 TAC §103.1

The Texas State Board of Dental Examiners adopts an amendment to §103.1, concerning general qualifications, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6630).

The board adopts this rule to consolidate duplicative rule language and to clarify dental hygiene examination procedures.

The section states the general qualifications for any person desiring to practice dental hygiene in the State of Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201463 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §103.12

The Texas State Board of Dental Examiners adopts the repeal of §103.12, concerning examination required, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6631).

The board is repealing this rule since all pertinent information is covered in other rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201464 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §103.13

The Texas State Board of Dental Examiners adopts the repeal of §103.13, concerning national board, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6631).

The board is repealing this rule since all pertinent information is covered in other rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992

TRD-9201465 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

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Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §103.14

The Texas State Board of Dental Examiners adopts the repeal of §103.14, concerning application deadline, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6631).

The board is repealing this rule since all pertinent information is covered in other rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

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TRD-9201466 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Chapter 109. Conduct Fair Dealing

• 22 TAC §109.144

The Texas State Board of Dental Examiners adopts an amendment to §109.144, concerning records and their transfer, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6631).

The board adopts this rule to clarify patient records ownerships and transfer for the protection of public health and provisions directed under revised statutory language.

The section states that a Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of diagnosis made and the treatment performed upon each dental patient. It also discusses the transfer of those records. In addition, it states that dental records are the sole property of the dentist who performs the dental service. The dentist who leaves a location, whether for retirement, sale, or whatever reason, shall either take all records with him, make a written transfer of records to the succeeding dentist, or make written agreement for the maintenance of records.

The Texas Association of Orthodontists commented in support of the rule.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201467 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Mobile or Moveable Offices

• 22 TAC §109.153

The Texas State Board of Dental Examiners adopts an amendment to §109.153, concerning practice requirements: upon approval, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6632).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information.

The section states that all dental service is to be performed upon indigents or those physically unable to be transported to a dental office.

Comments received regarded suggested word changes for further clarification of the rule.

The name of a group or association making comments for the section was Texas Department of Health. The agency agrees with comments.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201468 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Anesthesia and Anesthetic Agents

• 22 TAC §109.174

The Texas State Board of Dental Examiners adopts an amendment to §109.174, concerning sedation/anesthesia permit, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6632).

The board adopts this rule to provide a means to recover administrative costs in issuing permits for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states the annual renewal fees for dental license renewal certificates. It also states fees for new permit issuances after March 1, 1992.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rulos and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201469 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §109.175

The Texas State Board of Dental Examiners adopts an amendment to §109.175, concerning permit requirements, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6633).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information.

The section states standard of care requirements of the inhalation conscious sedation procedure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201470 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Retired Status

• 22 TAC §109.181

The Texas State Board of Dental Examiners new §109.181, concerning educational or other requirements, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6633).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information.

The section states the requirements for continuing or remedial education courses for a retired dentist who has applied to be reinstated into active practice.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201471 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Infection Control

• 22 TAC §109.220

The Texas State Board of Dental Examiners adopts an new §109.220, concerning purpose, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6634).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states the purpose of rules in this subchapter to establish proper sterilization, disinfection, and other infection control procedures in the practice of dentistry.

Comments received were as follows: Texas Department of Health-clarification of wording for technical accuracy; Texas Dental Association-clarification of wording for technical accuracy; Texas Association of Orthodontists-clarification of wording for technical accuracy; UTHScience Center-Houston Branch-clarification of wording for technical accuracy.

The names of groups and associations making comments for and against the section are as follows: for–Texas Department of Health; Texas Association of Orthodontists; UTHSC-Houston Branch; and against–Texas Dental Association.

House Bill 7 and OSHA require that health care workers comply with universal precautions and infection control procedures otherwise. The 72nd Legislature has given statutory authority to the Texas State Board of Dental Examiners to investigate infection control and to adopt rules accordingly.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201477 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §109.221

The Texas State Board of Dental Examiners adopts new §109.221, concerning definitions, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6634).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states the definitions of the terms "health care workers," "invasive-procedure" and "universal precaution" as those terms are defined in the Texas Health and Safety Code, §85.202, as amended, Acts 72nd Legislature, First Called Session, §36, Chapter 14 (1991), and guidelines from the Centers for Disease Control as applied to the practice of dentistry.

Comments received were as follows: Texas Department of Health-clarification of wording for technical accuracy; Texas Dental Association-clarification of wording for technical accuracy; Texas Association of Orthodontists-clarification of wording for technical accuracy; UTHScience Center-Houston Branch-clarification of wording for technical accuracy.

The names of groups and associations making comments for and against the section are as follows: for–Texas Department of Health; Texas Association of Orthodontists; UTHSC-Houston Branch; and against–Texas Dental Association.

House Bill 7 and OSHA require that health care workers comply with universal precautions and infection control procedures otherwise. The 72nd Legislature has given statutory authority to the Texas State Board of Dental Examiners to investigate infection control and to adopt rules accordingly.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.221. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. The definitions of the term "health care worker," "invasive-procedure," and "universal precautions," as those terms are defined in the Texas Health and Safety Code, §85.202, as amended, Acts 72nd Legislature, First Called Session, §36, Chapter 14 (1991), (hereinafter referenced as THSC §....) and guidelines from the Centers for Disease Control (CDC), as applied to the practice of dentistry, are incorporated herein by reference.

Sterilization –A process by which all forms of life with a defined environment are completely destroyed.

Disinfection–The partial elimination of active growth stage bacteria and the inactivation of some viruses. The potential for infection remains after disinfection, including infection with M. tuberculosis, hepatitis A virus (HAV), and hepatitis B virus (HBV). The human immunodeficiency virus (HIV) may also remain active following disinfection.

Barrier techniques–The use of protective items against infection-transmission during any intraoral or invasive procedure to include appropriate gloves for the procedure performed. This definition shall include protective eye wear and nasal/oral masks when "splash, spatter, or aerosol" of body fluids is possible or expected.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201478 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Infection Control

• 22 TAC §109.222

The Texas State Board of Dental Examiners adopts new §109.222, concerning required sterilization and disinfection, with changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6634).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states that sterilization and disinfection is required for all surgical and other instruments used intraorally and extraorally that are used invasively or in a contact with or penetration of soft tissue, bone, or other hard tissues.

Comments received were as follows: Texas Department of Health-clarification of wording for technical accuracy; Texas Dental Association-clarification of wording for technical accuracy; Texas Association of Orthodontists-clarification of wording for technical accuracy; UTHScience Center-Houston Branch-clarification of wording for technical accuracy.

The names of groups and associations making comments for and against the section are as follows: for–Texas Department of Health; Texas Association of Orthodontists; UTHSC-Houston Branch; and against–Texas Dental Association.

House Bill 7 and OSHA require that health care workers comply with universal precautions and infection control procedures otherwise. The 72nd Legislature has given statutory authority to the Texas State Board of Dental Examiners to investigate infection control and to adopt rules accordingly.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety

§109.222. Required Sterilization and Disinfection.

(a) Sterilization is required for all surgical and other instruments that may be used intraorally or extraorally, where these instruments may be used invasively or in contact with or penetration of soft tissue, bone, or other hard tissue. Other non-surgical instruments, such as plastic instruments, that may come into contact with tissue must be disinfected with an American Dental Association (ADA) registered solution that is tuberculocidal.

(b) All instruments subject to sterilization must undergo at least one of the following procedures:

(1) steam autoclave;

(2) chemical vapor;

(3) dry-heat oven;

(4) ethylene oxide;

(5) chemical sterilant (used in dilution amounts and time periods according to manufacture's recommendations or accepted OSHA standards). Sterilization equipment and its adequacy shall be tested and verified in accord with ADA recommendations.

(c) Following a dental procedure, all instrumentation and operatory equipment that may have become contaminated with blood, saliva, or tissue debris must be, at a minimum, disinfected and preferably sterilized by a CDC or ADA-approved method before utilization again for patient care.

(d) Prior to sterilization, all instruments must be free of any visible debris and must be either scrubbed thoroughly with a detergent and water solution or debrided in an ultrasonic device containing cleaning solution.

(e) Oral prosthetic appliances and devices from a dental laboratory must be washed with a detergent and water solution, rinsed, disinfected, and rinsed before the appliance or device is placed into a patient's mouth.

(f) Disposable (non-resterilizable) items, including, but not limited to, gloves, needles, intravenous fluids, intravenous administration tubing, intravenous catheters/needles, and like items, shall not be used in the treatment of more than one patient.

(g) All items contaminated by body fluids during patients care must be treated as biohazardous material. Before extracted teeth are returned to a patient or other party, the teeth must be rendered non-biohazardous. All contaminated single-use items must be disposed of through established OSHA guidelines for such disposal. Teeth or tissue fragments to be used for microscopic, testing, or educational purposes must be sterilized prior to use. Such tissues must be handled and stored as biohazardous material until sterilization is performed.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201479 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §109.223

The Texas State Board of Dental Examiners adopts new §109 223, concerning dental health care workers, with changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6635).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states all dental health care workers shall comply with universal precautions as prescribed for dentistry by the Centers for Disease Control and the Texas Health and Safety Code, §85.202 et seq, as amended, 1991, in the care, handling, and treatment of patients in the dental office or other setting where dental procedures of any type may be performed.

Comments received were as follows: Texas Department of Health-clarification of words for technical accuracy; Texas Association of Orthodontists-clarification of words for accuracy; Texas Dental Association-clarification of words for technical accuracy; University of Houston Health Science Center-clarification of words for technical accuracy.

The names of groups and associations making comments for the section are as follows: Texas Department of Health; Texas Association of Orthodontists; UTHSC-Houston Branch; Texas Dental Association. The agency agrees with comments.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.223. Dental Health Care Workers.

(a) All dental health care workers shall comply with universal precautions, as recommended for dentistry by the Centers for Disease Control and required by the Texas Health and Safety Code, §85.202, et seq, as amended, 1991, in the care, handling, and treatment of patients in the dental office or other setting where dental procedures of any type may be performed.

(b) All dental health care workers who have exudative lesions or weeping dermatitis shall refrain from contact with equipment, devices, and appliances that may be used for or during patient care, where such contact holds potential for blood or body fluid contamination, and shall refrain from all patient care and contact until the condition(s) resolvers unless barrier techniques would prevent patient contact with the dental health care worker's blood or body fluid.

(c) A dental health care worker(s) who knows he or she is infected with HIV or HBV and who knows he or she is HBeAg positive may not perform any invasive procedures unless and until the worker has reported his/her health status to an expert review panel, as provided for herein, and has sought and received counsel from panel as to what procedures, if any, the worker may continue to perform, pursuant

to provisions of THSC, §85.204, et seq, as amended, 1991.

(d) An expert review panel shall be named upon, or as soon thereafter as possible, the effective date of these rules and shall be comprised of experts designated by the board in the fields of infectious disease with emphasis in HIV and HBV epidemiology; dentistry with expertise in diagnosis and treatment of oral manifestations of HIV; and HBV infection; and public health. The expert review panel shall conduct its review(s) and make its determinations with confidentiality, except that such information shall be reported to the Texas State Board of Dental Examiners as provided herein. The release of information by the panel, relating to the workers' infectious disease status shall be to the board secretary and executive director, and any such information shall be utilized only for the purposes of monitoring the worker's compliance with conditions set by the review panel. In each instance of panel review of a health care worker's infectious disease status, the panel shall include, where possible, the health care worker's personal physician.

(e) A dental health care worker periodically may petition the panel for any redetermination(s) as to a change in the worker's status for purposes of reassessing patient-care duties that may or may not be performed.

(f) A dental health care worker who knows he/she is infected with HIV, or HBV and knows he or she is HBeAg positive, and who is not restricted from performing invasive procedures must comply with all infection control rules herein to include universal precautions, applicable to dentistry, as those are set out by the Centers for Disease Control and provisions of THSC §85.201, et seq, as amended, 1991.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201480 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §109.224

The Texas State Board of Dental Examiners adopts new §109.224, concerning disciplinary procedures, with changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6636).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states the disciplinary procedures for dental health care workers who fail to comply with notifications to the board within 24 hours, or next working day, of confirmed testing of positive results for HIV and HBV antibodies.

The following comments were received. Texas Department of Health-clarification of words for technical accuracy; Texas Association of Orthodontists-clarification of words for accuracy; Texas Dental Association-clarification of words for technical accuracy.

The names of groups and associations making comments for the section were as follows: Texas Department of Health; Texas Association of Orthodontists; UTHSC-Houston Branch; Texas Dental Association. The agency agrees with comments.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.224. Disciplinary Procedures.

(a) A dental health care worker shall notify the expert review panel directly through the Texas State Board of Dental Examiners (TSBDE) director within 24 hours, or the next working day, of confirmed testing of positive results for HIV or HBeAg seropositivity. Failure by the health care worker to do so may result in disciplinary action, including license revocation or suspension, as may be determined by the board in accord with Texas Civil Statutes, Article 4549, §3.

(b) A dental health care worker who is subject to the review panels counsel and prescribed conditions for practice, and who is allowed to continue to practice in part or in total, shall comply with all terms and conditions of the panel's determination and with any other matters of compliance within these rules and the Dental Practice Act.

(c) A dental health care worker who is subject to the review panel's counsel, and who experiences a break in protective barrier technique while treating a patient, is required to temporarily cease treatment until the protective barrier can be fully restored. If bleeding or body fluid exposure to the patient presents a continued potential exposure after protective barrier restoration, the infected health care worker must cease further direct contact or treatment of that patient, but the health care worker shall be responsible for the safety of said patient in the procedure termination. Following a protective barrier break, the infected health care worker must file an oral report with the TSBDE director no later than 24 hours, or the next working day, following the occurrence. The oral report must be followed with a written report within 72 hours to the director, who shall cause a copy of said report to be filed with the expert review panel. Failure of the health care worker to do so shall result in immediate disciplinary action by the board, after review and consultation with the review panel, in accord with this section. For purposes of this section, a break in protective barrier includes, but is not limited to, a cut, tear, or puncture in gloves or a cut, abrasion, or break of the skin which could expose the patient to the potential for infection.

(d) A dental health care worker who is found to be in violation of the review panel's determinations of the worker's conditions of practice as established by the panel, or in violation of universal precautions and these rules, is subject to disciplinary action by the board as described in subsection (a) of this section.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201481 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Chapter 113. Requirements for Dental Offices

• 22 TAC §113.2

The Texas State Board of Dental Examiners adopts an amendment to §113.2, concerning x-ray laboratories, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6636).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information.

The section states that laboratories such as x-ray laboratories must be in the dental office of a legally practicing dentist. All patients must be protected during the time of exposure to x-rays with a lead apron and equipment that is properly monitored by the authorized agency.

Comments received are as follows: Texas Dental Association-recommends that these words be deleted: "and by equipment that is properly monitored by the authorized agency."

The name of a group or association making comments against the section was as follows: Texas Dental Association.

The agency clarified that it was not the dentist who was required to monitor x-ray equipment; rather, it was equipment that was properly monitored when being used with a patient, all for safety reasons.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201472 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: October 15, 1991

For further information, please call: (512) 477-2985

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Chapter 114. Extension of Duties of Auxiliary Personnel-Dental Assistants

• 22 TAC §114.1

The Texas State Board of Dental Examiners adopts new §114.1, concerning permitted duties, with changes to the proposed text as published in the October 11, 1991, issue of the *Texas Register* (16 TexReg 5692).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas.

The section states that a dental assistant may perform a dental act(s) delegated by a dentist which after being performed, is capable of being reversed or corrected. The delegating dentist shall remain responsible for any delegated act.

Comments received were as follows: Texas Association of Orthodontists recommended word changes to rule-delete "no potential," Texas Dental Association-recommended word changes to rule-"A supervising dentist may delegate the performance of dental acts to a dental assistant, provided the delegation of such acts is not prohibited by the Dental Practice Act, Article 455le-1 subsection (b)(1), (2)(A), (2)(B), or (3).

The names of groups and associations making comments for and against the section are as follows: for: Texas Association of Orthodontists; and against: Texas Dental Association. The agency agrees with recommended comments.

The new section is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c) , which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§114.1. Permitted Duties. In delegating a dental act, or acts, to a dental assistant, the dentist shall delegate only those acts of which, after being performed by the dental assistant, the results are capable of being reversed or corrected. The delegating dentist shall remain responsible for any delegated act.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201473 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

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Proposal publication date: October 11, 1991

For further information, please call: (512) 477-2985

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Chapter 115. Extension of Duties of Auxiliary Personnel Dental Hygiene

Dental Hygiene

• 22 TAC §115.2

The Texas State Board of Dental Examiners adopts an amendment to §115.2, concerning permitted duties and radiologic procedures, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 TexReg 6637).

The board amends this rule for consistency with statutory changes to the Dental Practice Act.

The section further clarifies the duties a dental hygienist may perform in the dental office of his or her employer under his or her supervision, direction, and responsibility.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201474 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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• 22 TAC §115.3

The Texas State Board of Dental Examiners adopts an amendment to §115.3, concerning institutional employment, without changes to the proposed text as published in the October 11, 1991, issue of the *Texas Register* (16 TexReg 5692).

The board adopts this rule to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information.

The section allows custodial care institutions (public or private) to employ a dental hygienist when a licensed dentist is on the staff of said institution after approval of the state board. The hygienist is governed by the same laws and rules pertaining to supervision and responsibility as a hygienist in the employ of a dentists in private practice. The hygienist may perform those duties permitted under the supervision and responsibility of a licensed dentist.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201475 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Dental Hygiene

• 22 TAC §115.10

The State Securities Board adopts an amendment to §115.10, concerning radiologic procedures, without changes to the proposed text as published in the December 15, 1991, issue of the *Texas Register* (16 TexReg 6638).

The board amends this rule to eliminate provisions and dates that have expired or are no longer applicable.

The sections states the criteria necessary for a dentist to certify that a dental assistant is qualified to perform radiographic procedures.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4551f(6)(a)-(c), which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201476 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: February 20, 1992

Proposal publication date: November 15, 1991

For further information, please call: (512) 477-2985

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Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §§131.53, 131.55, 131.57, 131.58

The Texas State Board of Registration for Professional Engineers adopts amendments to §§131.53, 131.55, 131.57, and 131.58, concerning application for registration, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7433)

The amendments were necessary to provide consistency in the terminology between the Texas Engineering Practice Act and board rules and clarify the registration requirements.

The amendments to §§131.53, 131.57, and 131.58 provide consistency with the language contained in the Act when there is a reference to the registration fee. Section 131.55 requires an applicant registered in another country as either a chartered engineer or a professional engineer to submit documents substantiating the registration.

No comments were received regarding adoption of the amendments.

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

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

Issued in Austin, Texas, on January 29, 1992.

TRD-9201396 Charles E. Nemir, P.E.,
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 19, 1992

Proposal publication date: December 20, 1991

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

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• 22 TAC §131.54

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.54, concerning general application information, without changes to the proposed text as published in the November 19, 1991, issue of the *Texas Register* (16 TexReg 6678).

The amendment was necessary to provide authorization for the executive director to exempt applicants from the TOEFL (Texas of English as a Foreign Language) and the TSE (Texas of Spoken English) examinations.

The section provides that an applicant who is a native of a country where the primary language is other than English may apply for an exemption from the TOEFL and the TSE examinations by submitting substantiating evidence satisfactory to the executive director that he or she is proficient in the English language.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 29, 1992.

TRD-9201393 Charles E. Nemir, P.E.,
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 19, 1992

Proposal publication date: November 19, 1991

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

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Examinations

• 22 TAC §131.101, §131.104

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.101 and §131.104, concerning examinations, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7434).

The amendments were necessary to clarify examination procedures and establish the provision for the renewal of the engineer-in-training certificate.

The amendment to §131.101(b)(2) requires an applicant who is requesting an exemption from one or both of the examinations based on twenty or more years of outstanding technical achievement and widespread professional recognition to appear before the board for a personal interview. Section 131.101(d)(2) specifies that applicants applying under the Texas Engineering Practice Act, §21, must pass the principles and practice of engineering examination on the first attempt if the examination is required for registration. The amendment to §131.104 provides for a one-time renewal of an engineer-in-training certificate upon the approval of the board.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 29, 1992.

TRD-9201395 Charles E. Nemir, P.E.,
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 19, 1992

Proposal publication date: December 20, 1991

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

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Registration

• 22 TAC §131.133

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.133, concerning certificates of registration, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7434).

The amendment was necessary to establish Control Systems as an acceptable branch of engineering under which applications for registration may be submitted.

The amendment adds Control Systems to the list of recognized branches of engineering under which applications for registration will be accepted and for which a principles and practice examination will be available from the National Council of Examiners for Engineering and Surveying.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 29, 1992.

TRD-9201394 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

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Proposal publication date: December 20, 1991

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

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• 22 TAC §131.139

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.139, concerning reregistration, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7435).

The amendment was necessary to clarify the reregistration requirements.

The amendment deletes erroneous language and stipulates that the board will recognize the successful passing of any examination previously required of an applicant for an original registration who subsequently applies for reregistration.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 29, 1992.

TRD-9201397 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 19, 1992

Proposal publication date: December 20, 1991

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 325. Solid Waste Management

Subchapter A. General Information

The Texas Department of Health (department) adopts an amendment to §325.5 concerning definitions and new §§325.1051 - 325.1054 concerning recycling rate reporting requirements. The amendments and new sections are adopted with changes to the proposed text as published in the October 8, 1991 issue of the Texas Register (16 TexReg 5556).

The amendment and new sections implement the requirements of Senate Bill 1340, 72nd Texas Legislature, 1991, which amended the Solid Waste Disposal Act, Health and Safety Code, Chapter 361, by adding new Subchapter N concerning solid waste recycling programs. Section 325.5 covers definitions and the amendment clarifies the definition of composting. The new sections contain reporting requirements through which progress toward achieving legislatively established solid waste recycling goals can be measured.

Public hearings to receive comments and recommendations on the proposed rules were conducted in Lubbock, Austin, Houston, Grand Prairie, Corpus Christi, and Midland. In addition, the department received written comments during the official comment period.

Concerning the preamble to the rules, one commenter questioned the savings in waste disposal costs by meeting the recycling goal of 40% considering the cost of collection and the low values for many recyclables. Commenters also stated that local governments should not be penalized for noncompliance. In response, the department points out that the legislators have simply proposed a goal. No mandates or penalties have been established. Instead, achievement of the recycling goal will be accomplished largely through vigorous market development and stringent environmental controls on disposal. Accordingly, no changes were made.

Concerning the proposed rules generally, one commenter questioned the benefit of conducting an expensive full-scale Texas-wide recycling survey through the councils of governments (COGs) as proposed. He suggested that the state employ a sampling technique that would require less resources and have less financial impact on government and industry. In response, the department has revised §325.1053 in part in order to depend less on COGs to collect and assimilate data for this project. However, the department believes that a state-wide project is justified for the sake of accuracy and completeness, particularly with so little public data in existence on recycling in Texas.

Also, concerning §325.1053, a commenter addressed the need for the methodology to be compatible between regions because materials will be flowing between regions. The department's response is that it simplified the reporting requirements to develop only a state-wide recycling rate. However, the rules will serve as a standard for recycling rate measurements for any geographic area of the state.

Concerning the rules generally, a commenter suggested that the rules be coordinated with the impending recycling rate project sponsored by the department. The department's response is that it will consider proposing further revisions to these rules based on the outcome of this project due for completion by the Fall, 1992

A commenter asked what recycling goals planning regions should set for themselves. The department's response is that it recognizes that achieving a 40% recycling rate by 1994 would be an amazing accomplishment for any region of the state. Consequently, a realistic goal should be set knowing the composition of the region's waste stream and the viable markets for recyclables. Accordingly, no change is necessary.

A commenter suggested that while including existing recycling activities will help achieve the goal, the department should concentrate on crediting new and increased levels of recycling. Because a 40% recycling rate is a lofty goal and because Senate Bill 1340 allows taking into consideration ongoing community recycling programs, the department's response is that the goal should fully credit existing recycling activities. Accordingly, no change is necessary.

Concerning proposed §325.1051(b)(1), several commenters discussed the issue of double counting by suggesting that counting at the state level rather than at the regional level is less likely to count materials more than once. Commenters suggested that materials should be counted when transferred to a consumer of recyclable materials in the state or when transported out of the state for any purpose. The department concurs and has included language to this effect in the adopted §325.1053(c). As result, the department also changed adopted §325. 1051(b).

Related comments addressed miscounting the materials that are collected for recycling

but are rejected at the processing facility due to contamination or other reasons. In response, the department has included direction in the adopted §325.1053(c) to avoid this potential for overcounting.

Concerning §325. 1052, "Definitions," one commenter questioned whether the intent of Senate Bill 1340 was to have its definitions apply only to Subchapter Z of the rules. In particular, Senate Bill 1340 specifically amends the Health and Safety Code, §363.004, to include a definition for yard waste. The department concurs and the definition of yard waste and several other statutory definitions with broad applications have been moved to adopted §325.5.

Concerning §325.1052, several commenters suggested revisions to definitions that were included in Senate Bill 1340. The department disagrees because it is not authorized to modify statutory definitions.

Concerning §325.1052, the department has deleted the definition for "abandoned automobiles", because this item was deleted from the list of materials; the department assumes that abandoned autos are generally recycled as are other automobiles.

Concerning §325.1052, as regards the definition for "base year," one commenter suggested that 1990 recycling quantities would have to be estimated, while another commenter noted that estimated 1990 landfill disposal tonnages appear to be high. The department's response is that it will consider redefining the base year after reviewing the results from the recycling rate study.

Concerning §325.1052, as regards the definition for "diversion rate," one commenter noted that the National Recycling Coalition (NRC) Measurement Standards and Reporting Guidelines define this term to include only recovered materials. The term does not also include source reduced material as the department intended. The department concurs because the NRC does not define a term that includes recovered and source reduced materials; however, the department has replaced "diversion rate" with "waste stream reduction rate."

Concerning §325.1052, a commenter suggested that a definition be added for the term "high-grade office paper." In response, the department has replaced that item in the list of recyclables in adopted §325.1053(e) with "white ledger" and "colored ledger" which are more useful to the paper recycling industry.

Concerning §325.1052, as regards the definition for "recycling rate," one commenter asked whether the following materials would be included in the recycling rate, diversion rate, or neither: goods handled in thrift shops and salvage operations; backyard composted yard waste; grass clippings left in place through "Don't Bag It" programs; direct land applied yard waste; compost not put to beneficial use. The department's response is that those materials handled only by the generator or source will be accounted for in the waste stream reduction rate (formerly called the diversion rate). Only those materials collected by another party would be included in both rates. In the case of compost not put to beneficial use, the volume reduction that occurred as part of the composting process could count toward a landfill reduction rate, as would the volume reduction due to incineration. However, since the material was probably collected and handled by more than just the generator, this material would not contribute to the waste stream reduction rate.

The commenter further asked whether recycling of pre-consumer materials or commercial and industrial used oil, well-established practices, would be counted. The department's response is that those materials which are already recycled at high rates should not be counted. Also, these rules are for the municipal waste stream which does not include industrial waste. However, knowing that the recycling industry cannot always distinguish between pre- and post-consumer materials or industrial and municipal materials, the department will refine these rules in the future as better practices become apparent.

Concerning §325.1052, a commenter suggested a better definition for "source-reduced waste". The department concurs and has included one in the definition in the adopted section.

Concerning §325.1053(a)(1), one commenter pointed out that the phrase, "quantities of recyclable materials recovered" is not consistent with the definition for recyclable materials which also includes diverted materials. The department concurs and has corrected similar references to recyclable materials in §325.1053(e) and §325.1054(a).

Concerning §325.1053(a)(1), several commenters noted that the recycling industry does not keep records to determine their materials' regional sources. Their suggestion was to centralize the counting process. The department's response is that it has deemphasized regional counting in place of state-wide counts in the adopted §325.1053.

Concerning §325.1053(b), several commenters noted the difficulty in getting figures from the recycling industry. Some suggested incentives including awards or recognition in the short term and tax credits and grants and public finance programs in the long term. Others suggested guaranteeing confidentiality. In response, the department has included in the adopted §325.1053(b) a statement concerning confidentiality.

Concerning §325.1053, many commenters noted that while COGs are uniquely positioned to conduct this effort, the cost to COGs to collect the information and report the rates has been underestimated with no mention of a funding mechanism. One commenter suggested a funding formula of $5000 plus $0.01 per capita population per year, totaling $300,000 annually from the solid waste management fund. The department's response is that its retreat from requiring regional reports makes funding a moot point.

Concerning §325.1053, one commenter suggested that municipalities report directly to the state. Another suggested landfill permit holders estimate waste imported. The department's response is that, as much as possible, the department will collect information from those handling the materials directly, rather than work through regional representatives.

Concerning §325.1053(a)(2), several commenters noted that the reporting deadlines were unrealistic. The department's response is that it realizes that the data collection effort may take several months, if only to allow the data generators to assimilate and report the data themselves. Consequently, the department has removed any due dates at this time in anticipation that future rule amendments will include realistic dates.

Concerning the proposed §325.1053(a)(2), one commenter questioned whether totaling the regional results into a state-wide figure meant averaging. The commenter also suggested for the department's purposes that COGs note to and from what region or state waste is imported and exported. The department's response is that, without regional reports, the "totaling" question is a moot point, but reporting waste imported into and exported from the state is still relevant. In the interest of clarity, the intention of the proposed rules was to apply the rate formulas to the sums of state-wide reported quantities of recycled and disposed materials. Accordingly, no change is necessary.

Concerning proposed §325.1053(c), several commenters stated that the list of materials was too lengthy and that a complete count in all materials would be impractical. Some suggested that the materials be phased in and that existing reporting systems be integrated into this effort to minimize redundancy. In response, the department has included a lengthy list of materials in adopted §325 1053(e) in order to standardize reports and ensure that certain materials be included as a component of municipal solid waste and eligible for credit toward the recycling goal.

Concerning §325.1053(c), commenters suggested adding "other" categories for durable goods and organics, a mixed plastics category and separate categories under "(8) other materials" for asphalt pavement, household batteries, household hazardous waste. Other commenters suggested that the categories match the lists provided in the format guide for regional solid waste management plans and the United States Environmental Protection Agency characterization of municipal solid waste. The department generally concurs and has rearranged and adjusted the list of materials in §325.1053(e) generally to match these other lists

Concerning §325.1053(c)(8)(E), one commenter noted that the recycling industry generally cannot distinguish between industrial and municipal recyclables. Consequently, reporting separately the recycling of industrial waste routinely handled with municipal waste would be difficult. Another commenter questioned whether non-municipal solid waste routinely handled as municipal solid waste be taken into account in the calculation of the rates. The department concurs and has taken out the industrial waste category for simplicity.

Concerning §325.1053(d), one commenter suggested that dry tons be used for municipal sludge, if not for all recycled and disposed materials. The department concurs and has added such language to subsection (f).

Concerning proposed §325.1053(e), one commenter questioned the motives in penalizing entities which have taken a lead in recycling these materials. Another commenter suggested including only abandoned automobiles among those proposed. Another commenter suggested that if reclaimed asphalt pavement is included, that its credit be limited to that recycled after the base year. The department's response is that there is not enough information available at this time to specify which materials should not receive full credit toward the recycling rate. Instead, the department has chosen to specify a base year recycling rate in adopted §325.1053(g) to determine which materials shall not receive full credit toward the recycling goal. Only new recycling will be counted toward the goal for materials with a recycling rate greater than eighty percent in the base year.

Concerning §325.1054, one commenter suggested that the rates be measured for the residential and commercial sectors separately. The department's response is that it hopes that this enhancement will be possible some day but feels that there is not enough information at this time to determine the separate rates.

Concerning §325.1054(a), a commenter suggested that the formulas include multiplication by 100 percent. The commenter also suggested that the term "tons disposed" be clarified to include landfilled, illegally dumped or incinerated waste. Another commenter asked whether waste disposed included that disposed of in on-site or unpermitted facilities, through open-burning, or improper disposal methods. The department concurs by including recommended multiplication factor and has clarified the definition of "D" in the formulas concerning tons disposed of, in §325.1054(a).

Concerning §325.1054(a), one commenter suggested that a clear statement in the formula that "R" represents materials generated only in the report area, that "D" represents materials disposed of but not necessarily generated in the report area, and that "E" represents materials exported minus those materials imported. Another commenter asked whether "R" is material recovered for recycling or just that recycled. The department concurs and has added language to the formulas in §325.1054(a) to clarify these points.

Concerning §325. 1054(b), one commenter suggested that the term "diversion rate" include incineration. The intent was to determine the rate at which materials were kept from entering the waste steam through source reduction and recycling. Although incineration is a landfill reduction measure, it does not meet the intent of this term. For clarity, the department has changed the term "diversion rate" to "waste stream reduction rate" in §325.1054(b).

Concerning proposed §325. 1054(b), other commenters were pleased to see the inclusion of a rate which credited overall waste stream reduction and not just recycling. However, one commenter suggested that the rule include an absolute measure of waste reduction that does not depend on a base year. In response the department has included in adopted §325.1054(c) formulas for average annual and daily per capita waste generation rates for annual comparisons.

In addition to responding to the comments received, the department made several editorial changes throughout the sections for clarification.

Companies, groups, and associations which submitted comments during the public hearings or in writing included the following: the Recycling Coalition of Texas; the Environmental Defense Fund; R. W. Beck, and Associates; Commercial Metals Company; Cyclean; Vista Fibers; Texas Association of Regional Councils; Ark-Tex Council of Governments; Capital Area Planning Council; Deep East Texas Council Of Governments; Golden Crescent Regional Planning Commission; Heart of Texas Council of Governments; Houston-Galveston Area Council; Nortex Regional Planning Commission; North Central Texas Council of Governments; South Plains Association of Governments; South Texas Development Council; Texoma Council of Governments; Texas cities of Arlington, Denton, Irving, Fort Worth, Littlefield, and Lubbock. Generally the commenters supported the rules; however, they expressed some concerns and made suggested changes.

- **25 TAC §325.5**

The amendment is adopted under the Health and Safety Code (code), §361.427, which provides the department with the authority to adopt rules concerning recycling; §§361.011 and 361.024 which establish the department's jurisdiction over municipal solid waste management and provide the Board of Health (board) with the authority to adopt rules to manage and control municipal solid waste; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the Commissioner of Health.

§325.5 Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

Compost–The disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

Composting–The controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste steam that cannot be recycled into higher grade uses and convert these materials into a useful product that can serve as a soil amendment or mulch.

Recyclable material–A material that has been recovered or diverted from the non-hazardous solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable materials may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Recycling–A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial reuse.

Yard waste–Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

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

Issued in Austin, Texas on January 31, 1992.

TRD-9201545

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: February 21, 1992

Proposal publication date: October 8, 1991

For further information, please call: (512) 458-7271

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Subchapter P. Fees and Reports

Facilities

- **25 TAC §325.602, §325.603**

The Texas Department of Health (department) adopts amendments to §325.602 and §325.603 without change to the proposed text as published in the November 26, 1991, issue of the *Texas Register* (16 TexReg 6837). The amendments implement the requirements of House Bill 11, First Called Session, 72nd Texas Legislature, 1991, which amended the Solid Waste Disposal Act, Health and Safety Code, Chapter 361, by authorizing the department to establish a new disposal fee structure for municipal solid waste manage-

ment. The amendment to §325.602 establishes a new disposal fee structure for municipal solid waste management. The amendment to §325.603 amends the provisions concerning the date the quarterly report is due in order to correspond to the amendment being made in §325.602.

A public hearing was held to receive comments on the proposed amendments. The department also received written comments during the official comment period. A summary of the comments and the department's responses are as follows.

Concerning §325.602 in general, several commenters raised questions concerning the utilization of monies generated by the solid waste disposal fees and made various suggestions as to where any additional collected funds might be best directed. The department's response is that it understands the concerns of the various commenters; however, the utilization of fee revenues is established in the Health and Safety Code, §361 014. The amendment to §325.602 addresses only the collection of the prescribed fee and does not cover how the fees are to be spent. The department does not agree that the statutory restrictions or guidelines on how the fees are to be expended should be repeated in §325.602 and, therefore, has adopted the section without modification.

Concerning §325.602(a)(2) and (b)(2), one commenter recommended that these two paragraphs, which will allow various measurement options for both landfilled and other processed solid waste, not be adopted The commenter stated that inclusion of these paragraphs violated the intent of House Bill 11, which for landfilled waste is to pay the greater of $0 50 per ton or $0.50 per cubic yard for compacted waste; and the greater of $0.50 per ton or $0.10 per cubic yard for uncompacted waste. In response, the department believes the flexibility contained in these two paragraphs is not inconsistent with the intent of House Bill 11 and that it does not provide attractive or dangerous loopholes for operators seeking to reduce fee costs. The department believes there is a definite need for the measurement flexibility contained in these two paragraphs and, therefore, has adopted the entire section without change.

Concerning §325.602(b), one commenter recommended that no fee be collected for the processing (disposal) of solid waste compost, provided the finished compost is beneficially used The department's response is that §325.602(b) includes a fee (at one half the rate charged for landfilled solid waste) for shredded and composted municipal solid waste because such a fee is specifically set forth in the Health and Safety Code, §361 013(a). The provisions in §361. 013(a) also require the collection of a fee for sludges that are applied to the land for beneficial use, and on the basis of this requirement the department believes that the legislature did not intend to waive the disposal fee in those cases where beneficial use is achieved. Accordingly, the department has adopted the subsection without change.

Companies, groups, cities, and associations which submitted comments during the public hearings or in writing included the Houston-Galveston Area Council, the City of Monahans, and Texas Disposal Systems, Inc. The commenters were not for or against the amendments in their entirety, but they had concerns and recommendations.

The amendments are adopted under the Health and Safety Code, §361.011, which establishes the department's jurisdiction over municipal solid waste management; §361.024, which provides the board with the authority to adopt rules to manage and control municipal solid waste; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201547 Robert A. MacLean, M D.
Deputy Commissioner
Texas Department of Health

Effective date: February 21, 1992

Proposal publication date: November 26, 1991

For further information, please call. (512) 458-7271

Subchapter Z. Waste Minimization and Recyclable Materials

Recycling Rate Reporting Requirements

- **25 TAC §§325.1051-325.1054**

The new sections are adopted under the Health and Safety Code (code), §361 427, which provides the department with the authority to adopt rules concerning recycling; §§361.011 and 361.024 which establish the department's jurisdiction over municipal solid waste management and provide the Board of Health (board) with the authority to adopt rules to manage and control municipal solid waste; and §12 001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the Commissioner of Health.

§325.1051 Purpose and Scope.

(a) Purpose. The purpose of these sections in this undesignated head title establish reporting requirements through which progress toward achieving the established recycling goals can be measured. It is the state's goal to achieve by January 1, 1994, the recycling of at least 40% of the state's total municipal solid waste stream.

(b) Scope. These sections shall be used to determine local, regional, and statewide recycling rates. These sections also provide guidance for determining waste stream reduction and per capita waste generation rates.

§325.1052 Definitions of Terms and Abbreviations. The following words and terms, when used in this undesignated head title shall have the following meanings, unless the context clearly indicates otherwise.

Base year–The year 1990 used as a reference for recycling credit limits and for determining the amount of waste reduced at the source.

Municipal sludge–Any solid, semi-solid, or liquid waste generated from a municipal wastewater treatment plant, water supply treatment plant, or any other such waste having similar characteristics and effect, exclusive of the treated effluent from a wastewater treatment plant.

Net tons of waste exported–The difference between that portion of the municipal waste stream generated within specific geographic boundaries and exported for disposal and that portion which is generated outside the boundaries and imported for disposal during a specified time period.

Recycling rate–That percentage of the municipal solid waste stream which is recovered or diverted for recycling.

Source-reduced waste–A material or product, previously or typically entering the municipal solid waste stream, which has been prevented from entering that stream through source reduction.

Source reduction–Any action that averts the discarding of products or materials by reducing material use or waste at the source, including redesigning products or packaging so that less material is used, voluntary or imposed behavioral changes in the use and reuse on-site of materials, or products, or increasing durability or reusability of materials or products.

Total municipal solid waste stream–The sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

Waste stream reduction rate–That percentage of the municipal solid waste stream which is source-reduced or recovered or diverted for recycling.

§325.1053. Record Keeping and Reporting Requirements.

(a) Annual rates. Annually, the department shall determine, in accordance with the formulas of §325.1054 of this title

(relating to Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates), the state-wide recycling rate and, when possible, the waste stream reduction and per capita waste generation rates. Also, when possible, the department shall determine the rates for specific materials and for particular geographic areas of the state.

(b) Record keeping. Processors, handlers, and collectors of recyclable materials are encouraged to report and keep appropriate records to facilitate measuring recycling rates. The department shall protect confidential information received from these businesses to the extent authorized by law.

(c) Multiple counting. Diligence shall be practiced in collecting and reporting information to prevent multiple counting of any materials. Usually, materials will be counted as they are transferred to a recyclable material end- user or consumer in the state or as they are transferred out of state. The quantities of materials rejected and disposed of by the end-user shall be deducted from the quantities counted for recycling.

(d) Required minimum information for reporting. The following information at a minimum shall accompany the reporting of recycling rates for clarification:

(1) report area or geographic area covered by the report;

(2) reporting period - the year or portion of a year covered by the report;

(3) tons of each material, categorized per subsections (e) of this section, recovered or diverted for recycling from the total municipal solid waste stream generated within the report area during the report period;

(4) tons of municipal solid waste generated within the report area during the report period;

(5) tons of municipal solid waste generated during the report period within the report area but disposed of outside the report area;

(6) tons of municipal solid waste generated outside the report area but disposed of inside the report area during the report period;

(7) average populations within the report area during the report period and the base year, 1990; and

(8) the calculated recycling, waste stream reduction, and per capita waste generation rates using the formulas contained in §325.1054 of this title (relating to Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates).

(e) Materials recovered or diverted for recycling. To the extent possible, materials recovered or diverted for recycling shall be reported according to the following categories, using the major categories when finer detail is not possible:

(1) food waste;

(2) glass:

(A) glass containers;

(B) plate glass; and

(C) other glass;

(3) leather and hides;

(4) metal;

(A) aluminum;

(i) cans and containers; and

(ii) **other aluminum;**

(B) ferrous metal;

(i) steel cans and containers; and

(ii) other ferrous metal;

(C) other nonferrous metal;

(5) paper and paperboard:

(A) computer print out;

(B) white ledger;

(C) colored ledger;

(D) old corrugated cartons/kraft;

(E) old newspaper;

(F) printers' waste;

(G) old magazines;

(H) mixed paper; and

(I) other paper and paperboard;

(6) plastic:

(A) plastic containers;

(i) polyethylene terephthalate (PET, or Code 1 plastic);

(ii) high density polyethylene (HDPE, or Code 2 plastic);

(iii) polyvinyl chloride (PVC, or Code 3 plastic);

(iv) low density polyethylene (LDPE, or Code 4 plastic);

(v) polypropylene (PP, or Code 5 plastic);

(vi) polystyrene (PS, or Code 6 plastic); and

(vii) other plastic containers (Code 7 plastic);

(B) mixed plastic; and

(C) other plastic;

(7) rubber;

(8) textiles and apparel;

(9) wood;

(10) yard debris; and

(11) other materials, not included elsewhere;

(A) asphalt pavement;

(B) appliances;

(C) batteries;

(i) household; and

(ii) lead-acid;

(D) construction-demolition debris;

(E) hazardous household materials;

(F) municipal sludge;

(G) tires;

(H) used oil and oil filters;

(I) other inorganic materials;

(J) other organic materials; and

(K) other municipal solid waste materials.

(f) Units. All materials shall be reported in dry tons. For those materials normally measured by volume, the report shall indicate the volumetric quantity and the multiplier used to convert to weight in dry tons.

(g) Recycling credit limits. Except for lead-acid batteries, only the amount re-

cycled in addition to 1990 quantities can be credited toward the state recycling goal for materials with an individual recycling rate greater than 80% in the base year, 1990.

§325.1054 Recycling, Waste Stream Reduction, and Per Capita Waste Generation Rates.

(a) Recycling rate. The recycling rate is calculated by dividing the tons of material recovered or diverted for recycling by the tons of total municipal solid waste generated, where the total municipal solid waste generated is the sum of the tons recycled, the tons disposed of, and tons of waste exported minus the tons of waste imported. The formula for the recycling rate can be expressed as follows:

RR = [R / (R + D + E)] x 100, where

RR is the recycling rate (in percent);

R is the tons of material recovered or diverted for recycling from the total municipal solid waste stream of the report area during the report period;

D is the tons of total municipal solid waste incinerated, landfilled, or otherwise disposed of in the report area during the report period; and

E is the net tons of total municipal solid waste exported during the report period; that is, the tons exported from the report area minus the tons imported into the report area.

(b) Waste stream reduction rate. The waste stream reduction rate is calculated by dividing the sum of the tons recycled and tons source-reduced by the sum of the tons recycled, tons source-reduced, tons disposed of, and net tons of waste exported. The formula for the diversion rate can be expressed as follows:

WR = [(R + SR) / (R + SR + D + E)] x 100, where

WR is the waste stream reduction rate (in percent); and

SR is the tons of total municipal solid waste source-reduced during the report year as determined by the following formula:

SR = [(R90 + D90 +E90) (POP / POP90)] - (R + D + E), where

R90 is the tons of material recovered or diverted for recycling from the total municipal solid waste stream of the report area during the base year, 1990;

D90 is the tons of total municipal solid waste incinerated, landfilled, or otherwise disposed of in the report area during the base year, 1990;

E90 is the net tons of total municipal solid waste exported during the base year, 1990; that is, the tons exported from the report area minus the tons imported into the report area;

POP is the average population of the report area during the report year; and

POP90 is the average population of the report area during the base year, 1990.

(c) Per capita waste generation rates.

(1) Per capita annual waste generation rate. The per capita annual waste

generation rate is calculated by dividing the annual tons of municipal solid waste generated by the population of the area. The formula for this term can be expressed as follows:

AG = (R + D + E) / POP, where

AG is the per capita annual waste generation rate.

(2) Per capita daily waste generation rate. The per capita daily waste generation rate is calculated by dividing the annual rate, above, by 365 days as follows:

DG = AG / 365, where

DG is the per capita daily waste generation rate.

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

Issued in Austin, Texas on January 31, 1992.

TRD-9201546

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: February 2, 1992

Proposal publication date:October 8, 1991

For further information, please call: (512) 458-7271

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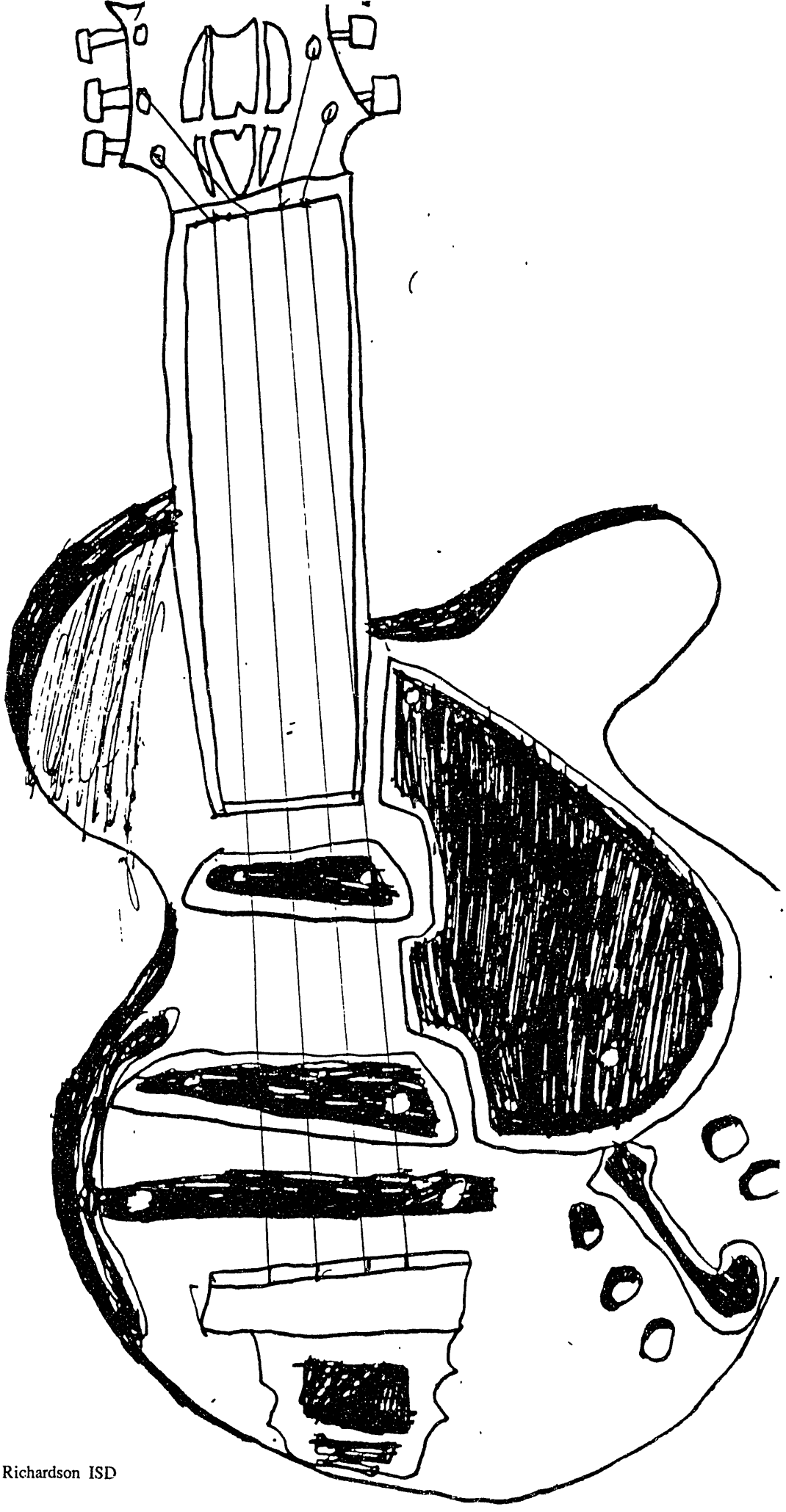

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 133. Medical Benefits-General Medical Provisions

Subchapter D. Dispute and Audit of Bills by Insurance Carriers

- **28 TAC §§133.300-133.304**

The Texas Workers' Compensation Commission adopts new §§133.300-133.304, concerning procedures for carrier payment, audit, and dispute of health care providers' bills for services rendered to injured workers under the Texas Workers' Compensation Act (the Act), with changes to the proposed text as published in the July 30, 1991, issue of the *Texas Register* (16 TexReg 4141).

Section 133.300 is changed in subsection (b) by increasing the presumed time for carrier receipt of a bill from three to five days after it was sent; in subsection (c) by adding a reference to another section to clarify the definition of a properly completed bill; in subsection (d) by requiring the carrier to annotate bills with its own legal name, if the provider has not done so; by adding a new subsection (e) to exempt carriers who have been approved by the commission to submit bills electronically from the requirements of manually annotating bills and returning them to the provider; by deleting redundant details relating to carrier dispute of bills in subsection (f), and referencing instead §133.304 (relating to Notice of Medical Payment Dispute); in subsection (h) by requiring that a submitted bill be properly completed before the carrier's time limit for payment begins to run, by requiring the make a partial payment if the audit delays payment, by clarifying that the partial payment shall be no less than 50% of the billed charges, but may be more, and by exempting carriers from the requirement to act on a disputed, partly-paid bill by the 60th day after receipt when the provider is unable to schedule an on-site audit on the dates proposed by the carrier.

Section 133.301 is changed in subsection (a) by expressly stating that the carrier-required audit of medical services may be either a desk audit or an on-site audit; in subsection (a)(6) by substituting the phrase "services not documented or substantiated" for "services not documented in the medical record; " in subsection (a)(9) by permitting the carrier to audit treatments or services that appear to be "unreasonable," in addition to "unnecessary;" in subsection (c) by increasing from seven to 10 days the maximum time for a health care provider to respond to a carrier request for additional documentation to support the billed charges, and by adding the provision that, if the provider fails to respond to such a request, the carrier shall pay no less than 50% of the amount billed within 45 days of receipt of the completed bill; by deleting subsections (d) and (e), which duplicated provisions in §133.300, and renumbering the following subsections accordingly; in renumbered subsection (d) by substituting the term "billed" for "charged," and by substituting the phrase "the reasons for reductions" for "a Notice of Medical Payment Dispute;" in renumbered subsection (e) by permitting, rather than requiring, a health care provider who disagrees with the results of an audit to request carrier review, and by limiting the provider's time for requesting carrier review to one calendar year from the date of receipt of the notice of medical payment dispute.

Section 133.302 is changed by substituting the term "completed bill" for "bill" in subsections (a) and (b)(7).

Section 133.303 is changed in subsection (a) by requiring a provider who is unable to schedule an on-site audit on the dates proposed by the carrier to supply the carrier in writing with an alternate date and time within seven days of receipt of the carrier's notice of intent to audit; in subsection (b) by requiring that the provider's designated liaison have authority to negotiate a resolution of the disputed issues; in subsection (c) by requiring that the carrier's agent have authority to act on behalf of the carrier; in subsection (d) by substituting the phrase "disputed issues between the treatments and/or services listed in the medical record and the billed charges" for "discrepancies between the medical record and the billed charges;" by inverting and renumbering subsections (e) and (f); in renumbered subsection (e) by permitting the carrier to request a refund after completing an on-site audit, by increasing the time for carrier post-audit action from 15 days to 30, by defining the date of completion of an on-site audit to be the seventh day after the audit date, and by deleting language referencing partial payment when an audit occurs; in renumbered subsection (f) by requiring the carrier to send the provider "reasons for reductions" instead of "notice of medical payment dispute" within a time frame that has been increased from 15 days after the audit to 30 days after the date of completion of the audit; and in subsection (g) by increasing from 15 to 30 days the time for a provider to respond to a carrier request for refund, and by substituting the phrase "carrier's request for a refund" for "notice of medical payment dispute (Form TWCC-62) as described in §133.304."

Section 133.304 is changed by transferring the substance of subsection (b) to subsection (c), deleting subsection (b), and renumbering the following subsections accordingly; in renumbered subsection (c) by correcting two erroneous references to other commission guidelines, and by referencing the new Medical Fee Guideline ground rules; in renumbered subsection (d) by permitting the carrier to submit the notice of medical payment dispute in lieu of stamping the bill with the required statement; in renumbered subsection (e) by requiring that the completed bill contain the legal name of the carrier, in addition to the previously listed requirements; in renumbered subsection (i), in the carrier's notice to the injured worker, by substituting the phrase "[charges] exceeded the medical policies and fee guidelines" for "are not in compliance with those medical policies and fee guidelines," by deleting the words "We are solely responsible for payment of these medical bills," and by substituting the phrase "any portion of the charges," for "the charges in dispute;" in renumbered subsection (j) by requiring the carrier's notice to the worker to be provided the first time a medical payment dispute arises, and at least annually thereafter, within 12 months of the date that health care is provided; by adding new subsection (k), permitting a carrier to, with commission approval, incorporate billing information with the notice of medical payment dispute instead of sending the provider a copy of the bill as submitted; by adding new subsection (l), permitting a carrier to propose, for commission approval, an alternative form of the notice of medical payment dispute; and by deleting references to Form TWCC-62 in subsections (b), (d), and (e), to reflect the options for notice of medical payment disputes provided in response to public comment.

In addition to the changes noted previously, the commission has made minor changes to all five sections for the sake of greater clarity. These changes are not intended to change the substance of the sections.

Comments concerning the proposal were filed by the Alliance of American Insurers, Allstate, Employers Casualty Company and Employers National Insurance Company, General Care Review, Hammerman Gainer, Highlands Insurance Group, Kemper National Insurance Company, Liberty Mutual Insurance Group/Boston, Medical Cost Consultants, Medical Cost Management Services, and Methodist Hospitals of Dallas.

Regarding comment addressing several sections simultaneously, one commenter suggested substituting the phrase "completed bill" for "bill" in §§133.300(h) , 133.301(e), and 133.302(a) and (b)(7). The commissioners agreed, and changed the sections accordingly. This commenter also suggested changing §133.300 and §133.301 to clarify that, while the carrier's initial payment may be no less than 50% of the billed charges, it may be as much as 100% of the billed charges. The commissioners agreed, and changed §133.300 as suggested. They did not act on the suggested change to §133.301, because the subsection referenced was deleted to eliminate duplicated information already contained in §133.300.

Regarding §133.300, one commenter suggested requiring the carrier's payment to be at least 80% of the billed charges. The commissioners disagreed with this suggestion, finding that the Act, Texas Civil Statutes, Article 8308-4.68, sets the base payment at 50% of the billed charges.

Regarding §133.300, one commenter asked whether the term "amount billed" meant total charges or the payment pursuant to the

"TWCC's DRG" system. The commissioners determined that the term "amount billed" refers to the total charges.

Regarding §133.300, certain commenters suggested simplifying and eliminating duplication by reorganizing §133.300 to contain all provisions concerning payment of medical bills. The commissioners disagreed, finding that the current format is consistent with that of other commission rules and necessarily separates some provisions for clarity and ease of reference. The commissioners did agree with the need to eliminate duplication, and amended the section to delete from subsection (e) the phrases "because of an explicitly stated fee guideline amount established by the commission or because of a negotiated contract," and "by returning the completed medical bill," and to delete subsection (f) in its entirety.

Regarding §133.300, several commenters "were concerned that manual and duplicate reporting would inhibit efficiency within the system," and requested "reconsideration of the requirement to annotate and return hard copies of bills when adjustments have been made in accordance with fee schedules or negotiated contracts where bills are submitted electronically." The commissioners agreed, and added subsection (e) to exempt from these requirements carriers who have been approved by the commission to transmit bills electronically.

Regarding §133.300, one commenter recommended revising subsection (c)(1) and (2) to identify information which must be contained on a bill in order for it to constitute a "properly completed bill." Finding that §134.800 adequately identifies the information required to complete a bill, the commissioners added a reference to this section in subsection (c).

Regarding §133.301, one commenter suggested increasing the number of days for a health care provider to supply the carrier with additional documentation from seven to 14 days. The commissioners were in general agreement with the need for more time, but increased the period to 10 days, to be consistent with the time period provided in §133.2 (relating to Sharing Medical Reports and Test Results).

Regarding §133.301, one commenter suggested that the section address whether a provider's failure to submit a required medical report after an examination relieves the carrier of the duty to pay the 50% required partial payment. The commissioners agreed with this suggestion, and added the following sentence to subsection (c): "If the health care provider fails to send the requested documentation, records, or information to the carrier, the carrier shall pay no less than 50% of the amount billed within 45 days of receipt of the health care provider's completed bill."

Regarding §133.301, one commenter suggested that a provider who disagrees with the results of an audit be required to request carrier review "within 30 days of receipt of the notice of medical payment dispute." The commissioners agreed with the need for an express time limit, but set it instead at one calendar year from receipt of the notice of medical payment dispute, to correspond to the one year time limit established in §133.305 (relating to Request for Medical Dispute Resolution).

Regarding §133.301, several commenters recommended adding an introductory paragraph specifying the responsibilities of the carrier. The commissioners disagreed, noting that subsection (a) of §133.300 serves this purpose. Regarding §133.301, several commenters suggested changing subsection (a) to specify that the carrier's audit may be either a desk audit and or an on-site audit. The commissioners agreed, and changed the subsection accordingly.

Regarding §133.303, several commenters suggested specifying the means and the time limit for a provider to notify a carrier of an alternative on-site audit date. The commissioners agreed, and amended the section to require the provider to send the carrier written notice of a proposed alternative audit date and time no later than seven days from receipt of the carrier's notice of intent to audit.

Regarding §133.303, one commenter suggested requiring that the provider's designated liaison during the audit have the authority to negotiate a resolution of disputes, and that the carrier's agent have the authority to act on the carrier's behalf. The commissioners agreed, and incorporated the suggested language into subsections (b) and (c).

Regarding §133.303, one commenter suggested postponing the carrier's liability for interest when payment is delayed because the provider rejected the carrier's proposed dates for on-site audit and proposed a later date. The commissioners disagreed, finding that the Act, Texas Civil Statutes, Article 8308-8.27, requiring interest to be paid as of the 61st day after receipt of the bill, allowed for no exceptions.

Regarding §133.303, one commenter suggested defining the phrase "completion of the on-site audit" as seven days after the date the audit was conducted, noting that since the need for additional information is often discovered during the audit, and since the provider has seven days to submit such information, the carrier may be left with only eight days to complete the audit report. The commissioners agreed, and changed the section as suggested.

Regarding §133.303, one commenter suggested that the language in subsection (e) be changed from "date of the on-site audit" to "date that the audit is completed." The commissioners agreed, and changed the section as suggested.

Regarding §133.303, several commenters noted that the time frames for action were too short, and requested extending them from 15 to 30 days. The commissioners agreed, and changed subsections (e), (f), and (g) as suggested.

Regarding §133.304, several commenters suggested simplifying and eliminating duplication by reorganizing §133.304, and revising the method by which a notice of payment dispute is communicated to the commission, the health care provider and the injured worker. The commissioners disagreed, finding that the current format is consistent with that of commission rules and necessarily separates some provisions for clarity and ease of reference.

Regarding §133.304, several commenters suggested reconsidering the proposed requirement to annotate and return hard copies of bills to medical providers when adjustments have been made pursuant to an explicitly stated fee guideline or a negotiated contract. The commissioners agreed, and changed subsection (d) to permit carriers to incorporate information about such adjustments in the notice of medical payment dispute.

Regarding §133.304, one commenter recommended utilizing additional exception codes beyond "F", "B", or "C". The commissioners disagreed and retained the proposed provision permitting alternative notification methods only when these three codes apply. In all other cases, the commission believes that the provider needs the hard copy of the bill returned for record-keeping purposes, or to support a request for dispute resolution.

Regarding §133.304, one commenter suggested permitting a carrier to propose an alternative form of the notice of medical payment dispute, subject to the approval of the commission. The commissioners agreed, and added subsection (l) for this purpose.

Regarding §133.304, one commenter suggested that commission Form TWCC-62, Notice of Medical Payment Dispute, be used for all bill reductions, regardless of the nature of the reduction. The commissioners disagreed, relying instead on the alternative provided by new subsections (k) and (l).

Regarding §133.304, one commenter suggested revising the next by Insurance Carriers to the last sentence in subsection (j) to "Neither you nor your employer should be billed for the charges in dispute." The commissioners disagreed, and retained the proposed "will," on the grounds that it more vigorously conveyed the statutory prohibition against billing the injured worker.

Regarding §133.304, one commenter stated that the wording in subsection (j) is incorrect, misleading, and would not be appropriate for carriers to make. The commissioners agreed, and deleted the first sentence "We are solely responsible for payment of these medical bills."

Regarding §133.304, one commenter suggested that the commission establish a procedure for providers to bill the injured worker or the injured worker's health insurer for the non-job-related services while assuring that the workers' compensation carrier only pays for the job-related services. The commissioners disagreed. The Act and commission rules provide guidelines and procedures for providers to bill carriers for medical treatment for job-related injuries and illnesses. The commission has no jurisdiction to establish billing methods or procedures for non-job-related services.

The new sections are adopted under Texas Civil Statutes, Articles 8308-8.01(b) , which authorize the commission to provide rules for the review and audit of payment by insurance carriers of charges for medical services pro-

vided under the Act; and 8308-2.09(a), which authorizes the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

§133.300. Carrier Payment of Bills From Health Care Providers.

(a) An insurance carrier is responsible for the acts or omissions that violate the Texas Workers' Compensation Act (the Act) or commission rules committed in the performance of services for the insurance carrier by an audit company or auditor under contract with the carrier to review or monitor health care services.

(b) The carrier shall date stamp each health care provider bill upon receipt. Failure to date stamp the bill creates a rebuttable presumption that the bill from the health care provider was received five days after it was sent to the carrier.

(c) The carrier shall process for payment all properly completed billings for medical services submitted on commission approved forms as described in §134.800 of this title (relating to Health Care Provider Billing).

(1) The carrier will return to the provider those bills improperly completed or on improper forms within seven days of receipt of the bill from the provider.

(2) The carrier's time limit for payment of medical bills does not begin until receipt of properly completed bills that are on commission approved forms.

(d) Except as described in subsection (e) of this section, the carrier shall annotate the medical bills as follows:

(1) legal name of the carrier, if absent;

(2) amount paid;

(3) the date paid; and

(4) if appropriate, the payment exception code, as described on Form TWCC-62, Notice of Medical Payment Dispute.

(e) When a carrier is approved by the commission to submit medical bills electronically, the carrier may be relieved of the requirements to manually annotate bills and submit the annotated bill to the health care provider.

(f) If the carrier disputes the health care provider's charge, the carrier shall notify the provider of the reduction as described in §133.304 of this title (relating to Notice of Medical Payment Dispute).

(g) The injured employee shall be notified of medical payment disputes as described in §133.304 of this title.

(h) Payment of all allowable charges shall be remitted to the health care provider no later than 45 days after receipt of the completed bill by the carrier, unless the insurance carrier's audit of health care services will delay payment beyond the 45th day after receipt of the completed bill by the carrier. If the audit delays payment, the shall pay no less than 50% of the amount billed no later than the 45th day after the receipt of the completed bill. Desk audits and on-site audits shall be performed as described in §133.301 and §133.303 of this title (relating to Carrier Audit of Bills from Health Care Providers, and Procedures for On-Site Audits; Payments After Audit). Except as provided in §133.303 of this title, if the payment as required by this subsection and the Act, Texas Civil Statutes, Article 8308-4.68(b), has been made, the supplemental payment or request for refund, and a notice of medical payment dispute as described in §133.304 of this title, shall be provided no later than 60 days after receipt of the completed bill from the health care provider.

(i) An insurance carrier or a health care provider shall pay interest pursuant to the Act, Texas Civil Statutes, Articles 8308-8.27 and 8308-1.04, without order of the commission.

§133.301. Carrier Audit of Bills From Health Care Providers.

(a) The insurance carrier shall be responsible for making appropriate payment of charges for medical services received from the health care provider which may require a desk or an on-site audit. The audit when conducted may include, but is not limited to, examination for:

(1) compliance with the fee guidelines established by the commission;

(2) compliance with the treatment guidelines established by the commission;

(3) duplicate billing;

(4) inappropriate itemization of services;

(5) billing for treatments or services unrelated to the compensable injury;

(6) billing for services not documented or substantiated;

(7) accuracy of coding in relation to the medical record and

(8) correct calculations; and

(9) provision of unnecessary and/or unreasonable treatments or services.

(b) Neither the carrier nor the carrier's agent shall change codes on the medical bills submitted by the provider without affording the provider the opportunity to submit additional documentation, prior to payment.

(c) The health care provider shall submit to the carrier, no later than 10 days from receipt of a request, any additional documentation, records, or information related to the treatments, services, or the charges billed. If the health care provider fails to send the requested documentation, records, or information to the carrier, the carrier shall pay no less than 50% of the amount billed within 45 days of receipt of the health care provider's completed bill.

(d) If the payment for any item differs from the amount the health care provider billed, the carrier shall submit the reasons for reductions, as described in §133.304 of this title (relating to Notice of Medical Payment Dispute), with the payment of the bill.

(e) A health care provider who disagrees with the results of an audit may request review by the insurance carrier and submit supporting documentation as necessary within one calendar year of receipt of the notice of medical payment dispute.

(f) Unresolved disputes may be submitted for review by the commission as described in §133.305 of this title (relating to Request for Medical Dispute Resolution).

§133.302. Notification of Intent to Perform On-site Audit.

(a) No later than 45 days after the receipt of the completed bill, the carrier or the carrier's agent shall notify the health care provider in writing of the intent to perform an on-site audit.

(b) The carrier or the carrier's agent shall include the following information on the notification of intent to audit to the health care provider:

(1) the employee's full name, address, and social security number; performed;

(2) date of injury;

(3) the date(s) of service for which the audit is being performed;

(4) the insurance carrier's name and address;

(5) the name and telephone number of the person to contact with questions about the audit;

(6) the name of the individual who will represent the carrier and who will perform the on-site audit; and

(7) two proposed dates no later than 60 days after receipt of the completed bill by the insurance carrier for the on-site audit.

§133.303. Procedure for On-site Audits: Payments After Audit.

(a) If the provider is unable to schedule an on-site audit on the dates proposed by the carrier, the provider shall notify the carrier in writing, within seven days of the carrier's notification of intent to perform an audit, of an alternate on-site audit date and time.

(b) The provider shall designate one person, with authority to negotiate a resolution of disputes, to serve as the liaison between the provider and the carrier and to be available to the carrier's agent.

(c) The carrier's agent, with authority to act on behalf of the carrier, shall personally appear for the on-site audit at the scheduled date and time.

(d) On the day of the on-site audit, the provider's liaison and the carrier's agent shall meet for an exit interview. The carrier's agent shall present a list of disputed issues between the treatments and/or services listed in the medical record and the billed charges. The provider's liaison and the carrier's agent will discuss and attempt to resolve the issues in dispute.

(e) The payment of all allowable charges or a request for refund shall be submitted to the health care provider no later than 30 days after completion of the on-site audit. The completion of the on-site audit shall be defined as seven days after the date of the on-site audit.

(f) The carrier shall submit to the health care provider the reasons for reductions as described in §133. 304 of this title (relating to Notice of Medical Payment Dispute) within 30 days after the date of the completion of the on-site audit.

(g) Any refunds due to the carrier from the health care provider shall be paid within 30 days of receipt of the carrier's request for a refund.

§133.304. Notice of Medical Payment Dispute.

(a) The report described in Texas Workers' Compensation Act, (the Act), Texas Civil Statutes, Article 8308-4.68(d), shall be named Form TWCC-62, Notice of Medical Payment Dispute.

(b) Except when disputed charges are limited to reductions according to an explicitly stated fee guideline or negotiated contract amounts, a copy of the notice of medical payment dispute shall be sent to the health care provider and a copy shall be kept in the injured employee's file at the carrier's office. The notice of medical payment dispute shall accompany the medical bill except as provided in subsection (k) of this section.

(c) Explicitly stated fee guideline amounts are defined and limited to:

(1) the product of the appropriate conversion factor and a specific relative value unit or set fee amount, as described in §134.201 of this title (relating to the Medical Fee Guideline) including the application of the Medical Fee Guideline ground rules;

(2) the result of a calculation as described in §134.501 of this title (relating to the Pharmaceutical Fee Guideline); or

(3) the result of a calculation as described in §134.400 of this title (relating to the Acute Care Hospital and Inpatient/Outpatient Services Fee Guideline).

(d) If the reductions in payment are limited to reductions by explicitly stated fee guideline or negotiated contract amounts, the insurance carrier shall stamp on the bill the following information, or submit a notice of medical payment dispute: "The reductions in payment are made according to the Texas Workers' Compensation Commission established fee guidelines (payment exception codes "F" or "B") or negotiated contract (payment exception code "C"). If you have questions contact: [name of auditor or adjuster] at [telephone number with area code]"

(e) If the reductions in payment are made as described in subsections (b) and (c) of this section, the annotated and overstamped medical bill shall serve as adequate notification of medical payment dispute to the health care provider. In this situation the notice of medical payment dispute does not have to be sent to the provider. The completed bill shall serve as the notice of medical payment dispute and shall include:

(1) legal name of the carrier;

(2) amount paid;

(3) the date paid; and

(4) the payment exception code "F", "B", or "C" as described on Form TWCC-62, Notice of Medical Payment Dispute.

(f) The stamp described in subsection (d) of this section shall not be used when there are reasons for reductions other than explicitly stated fee guidelines or negotiated contract amounts, or when there is a combination of reasons for reductions or denials in payment.

(g) When a treatment or service is reduced or denied on the recommendation of a peer review initiated by the carrier, a copy of the reviewer's report and the professional discipline and specialty information (not to include name, address, letterhead, or other specific identification) of the reviewer shall be included with the notice of medical payment dispute and submitted to the health care provider, injured employee, and employee's representative. This subsection does not apply to non-peer review auditors, adjusters, reviewers, or other carrier representatives.

(h) A copy of the notice of medical payment dispute shall be sent to the employee if an insurance carrier files the notice because:

(1) liability for or compensability of the claim is contested;

(2) the employee is alleged to have violated the Act, Texas Civil Statutes, Articles 8308-4.62 or 8308-4.63;

(3) the carrier alleges that the employee requested or authorized treatments or services not related to the compensable injury;

(4) the carrier alleges the treatment or service rendered was unnecessary care for the injury; or

(5) the treatment or service is not according to treatment guidelines established by the commission.

(i) If an insurance carrier disputes medical charges for reasons other than those listed in subsection (b) of this section, the insurance carrier shall provide the following notice to the employee: "(Name of carrier) pays for medical services in accordance with the medical policies and fee guidelines established by the Texas Workers' Compensation Commission. Some of the charges submitted for medical services you received in connection with your workers' compensation injury exceeded the medical policies and fee guidelines." "Neither you nor your employer will be billed for any portion of the charges. This notice does not require a response or any other action on your part."

(j) The notice required by subsection (i) of this section must be provided the first time a medical payment dispute arises and at least annually thereafter within 12 months of the date that health care services are provided for a compensable injury, and it may be provided with a payment of income benefits.

(k) In lieu of the requirement to send a copy of the health care provider's submitted medical bill, an insurance carrier may incorporate billing information with the notice of medical payment dispute, subject to approval from the commission.

(l) A carrier may propose an alternative form of the notice of medical payment dispute, which the commission will review and approve upon determination that the contents and format of the proposed form is sufficient for the purposes of this rule.

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201449 Ernest Boardman
Acting General Counsel
Texas Workers' Compensation Commission

Effective date: February 20, 1992

Proposal publication date: July 30, 1991

For further information, please call: (512) 440-3972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 19. Oil Spill Prevention and Response

Subchapter A. General Provisions

- **31 TAC §§19.1-19.6**

The General Land Office (GLO) adopts new Chapter 19, Subchapters A-D, §§19.1-19.6, 19.11-19.20, 19.31-19.39, and 19.51-19.54, concerning prevention of oil spills in coastal waters, response to such spills, and compensation and liability for the response costs and damages incurred. Sections 19.1-19.4, 19.11-19.18, 19.20, 19.31-19.38, and 19.52-19.54 are adopted with changes to the proposed text as published in the August 9, 1991, issue of the *Texas Register* (16 TexReg 4335). Sections 19.5, 19.6, 19.19, 19.39. and 19.51 are adopted without changes and will not be republished..

The new chapter implements the Oil Spill Prevention and Response Act of 1991, Chapter 40, Natural Resources Code (OSPRA). With respect to oil spills in the marine environment, OSPRA provides a comprehensive legal framework and funding system allowing the State of Texas to establish and monitor oil spill prevention and response requirements for vessels and facilities that handle oil, to establish and carry out an effective program for state response to oil spills, to provide timely and equitable settlement and compensation of claims for those harmed by oil spills, and to provide for assessment and restoration for environmental damage from oil spills. OSPRA supports and complements the Oil Pollution Act of 1990, Public Law 101-380 (OPA). For example, compliance with OPA requirements for proof of financial responsibility and for oil spill response plans for vessels and facilities that handle oil constitutes compliance with certain provisions of OSPRA. Federal agencies delegated oil spill prevention and response duties under OPA include the Department of Transportation, the Environmental Protection Agency, the Department of Commerce, and the U.S. Army Corps of Engineers. These federal agencies are currently developing programs and regulations to implement OPA, which establishes rulemaking and programmatic deadlines extending as late as 1993. Since federal program implementation and rulemaking will affect key provisions of OSPRA, the GLO proposes this chapter to establish interim requirements and procedures under OSPRA pending full implementation of OPA. OSPRA also leaves Texas the flexibility to establish regulatory requirements that differ from federal requirements if there is a substantial state interest to protect. The GLO intends to develop a state prevention and response program for oil spills in coastal waters that provides full capability to protect the environment and the health and welfare of the inhabitants of the Texas coast.

Subchapter A of the proposed Chapter 19 sets out general provisions applicable to the other subchapters of the proposed chapters. These include definitions, provisions for access to property by personnel or agents of the GLO in carrying out response actions and other activities under OSPRA, and provisions on filing various forms and information with the GLO.

Subchapter B deals with oil spill prevention and preparedness regulations. It centers mainly on the OSPRA requirement that coastal facilities handling oil obtain a discharge prevention and response certificate from the GLO. It also addresses the OSPRA requirements that vessels and facilities have spill response plans and proof of financial responsibility for liability from oil spills. It contains provisions setting the parameters for vessel and facility audits, drills, and inspections by the GLO to determine oil spill prevention and response capability, as well as denial of entry into port for vessels violating OSPRA. Finally, Subchapter B specifies requirements for discharge cleanup organizations, which are those entities formed for the specific purpose of engaging in oil spill response and cleanup. Subchapter C establishes practices and reporting requirements the GLO and persons responsible for coastal oil spills must follow in responding to oil spills under GLO jurisdiction. These include provisions whereby the GLO will assume a proactive role in determining the adequacy and course of oil spill response and the remediation of natural resource damage. Subchapter C also outlines the respective roles of the Texas Water Commission, the Texas Railroad Commission, and the GLO in coastal oil spill response. Subchapter D prescribes procedures for compensation and reimbursement to state agencies and others for costs incurred in responding to coastal oil spills and for property and other monetary damages from such spills.

Regarding §19.2(a)(1), Coastal Waters, many commenters suggested that a map would clarify the jurisdictional boundaries of the statute. In an effort to clarify the definition without requiring reference to an extraneous document, the GLO has adopted the U.S. Environmental Protection Agency/U.S. Coast Guard on-scene coordinator boundaries with additions to encompass the OSPRA jurisdictional reach of waters navigated by vessels with a capacity of 10,000 U. S. gallons or more of oil as fuel or cargo. Two comments concerned whether coastal waters include tidally influenced groundwater. No change was made based on this inquiry. The statutory definition limits the scope of "coastal waters" to surface waters. (OSPRA §40.003(2)).

Another commenter suggested that all of the statutory definitions be repeated in the regulations but this was not adopted. The purpose of regulations is to enhance and detail statutory matters, not to repeat them. Similarly, suggestions that all definitions in the regulations be exactly the same as the statute undermines the purpose of regulations.

Other commenters were concerned with defining the limits of navigational obstruction. No change was made because this will be a practical determination based on present and past actual usages, and which should be clarified by the amended definition now adopted. The location of an artificial obstruction does not take the waters within that obstruction out of the jurisdiction of the statute as suggested by several commenters. OSPRA reaches any place where a discharge therefrom would threaten coastal waters.

One commenter asked for a definition of "artificial obstruction." This was not added because there are many types of artificial obstructions which inhibit navigation and the meaning is clear enough without naming all possible types.

In §19.1(a)(2), Coastal Facility, a new definition has been provided in response to comments requesting a definition of "immediately" as applied to the phrase "immediately enters coastal waters."

Some commenters expressed the opinion that pipelines ought to be excluded from the definition. Such an exclusion would leave unregulated a major form of transportation of oil within the state. The suggestion was therefore not adopted.

One commenter stated that the definition substantively changed the definition in the statute. This comment did not cause any change in the regulation since the revised definition is consistent with the parameters of the statute. Some commenters suggested that use of the phrase "handles oil" might create confusion between OSPRA, the Resource Conservation and Recovery Act, and the Clean Water Act and might infringe on the jurisdiction of the Texas Water Commission. This phrase and its definition were not changed because each referenced statute addresses very different environmental concerns and establishes different regulatory schemes. To the extent that spill prevention, containment, and counter measure (SPCC) plans required under the Clean Water Act are similar to discharge contingency plans required by OSPRA, the regulations attempt to coordinate the requirements in the discharge contingency plan rules.

One commenter opened that OSPRA's jurisdiction was limited to waterfront or offshore facilities but no change was made in response to this comment because the statutory definition clearly encompasses more. The jurisdiction extends to anyplace where an

unauthorized discharge of oil, not abated or contained, could enter coastal waters within 12 hours.

In order to clarify the definitions section, this definition was merged with the definition for "facility."

Concerning §19.1(a)(4), Discharge Cleanup Organization, many commenters asked whether cooperatives were included in the definition of discharge cleanup organization. Since the statute clearly mentions such groups, no changes to the regulation were made.

Concerning §19.1(a)(5), Environmentally Sensitive Areas, commenters requested that government locate and identify these areas. This type of comment addresses policy concerns rather than the scope or meaning of the regulation, therefore no change was made other than a minor clarification. Certain areas have been identified by other governmental agencies and the OSPRA directed statewide contingency plan. Forthcoming statewide GIS systems will assist those regulated entities not familiar with the resources in their community.

Many comments were critical of the definition of "facility," §19.1(a)(5), as expanding the definition of the statute, but a comparison of the language of each shows that it did not. However, in light of comments which indicated confusion about what was specifically included in this definition, some clarifying changes were made.

The descriptive inclusions in the regulations are particularly relevant in determining the size of the facility for the purposes of terminal registration. There were several commenters which recommended that the references to "interrelated" facilities be deleted. This simplifies regulatory compliance by treating such entities as one facility, therefore, this comment was not adopted.

Finally, several commenters expressed concern that public port authorities would be held to a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) type standard of liability by virtue of ownership of docks without any operational control over them. This concern is addressed in the definition of owner/operator and the GLO cannot by regulation affect statutory and common law liability theories. No changes are made. In order to clarify the definition section, this definition was merged with the definition of "coastal facility."

Regarding §19.1(a)(9), Handle, commenters suggested that the phrases "dispose of" and "produce" and "treat" were somehow exclusively within the province of the Texas Water Commission or the Railroad Commission. Since the purpose of these descriptive phrases is to include all types of facilities from which a discharge could threaten coastal waters, it is natural that such facilities may also be in the jurisdiction of another agency. It is the intention of the GLO to use such terms of art to make clear the reach of the statute. No changes were made in response to these comments.

Section §19.1(a)(14), Owner or Operator, generated one of the largest numbers of comments. The phrase "in possession" of a facility or vessel was believed to be beyond the scope of the statute and the situation of a vessel at dock possibly becoming the responsibility of the dock owner created consternation. The thrust of the statute is to place liability on those in the best position to influence prevention and response compliance. This section was changed to respond to the many comments received.

Other comments on this section were inquiries regarding the definition of the word "person." In order to make clear the extent of the rule, a definition of person was included. Comments regarding §19.1(a)(15), Regulated Vessel, noted that the gap between the federal definition and the state definition should be eliminated, but these are statutory so no change was made. Several commenters questioned including pleasure craft and emergency response vessels. This determination was made by the legislature, and the GLO is not authorized to lessen the scope of the statute by regulation and so no change was made.

Several commenters addressed §19.1(a)(16), suggesting the addition of the words "of oil" each time this phrase was used. The statute applies to oil only and not to any other substance so the addition was not adopted. One comment indicated that a discharge in violation of a state or federal permit was not an unauthorized discharge. Such an interpretation is contrary to the purpose of the Clean Water Act and it would be inappropriate in rules designed to keep waters as pristine as possible. (OSPRA, §40.002.)

One commenter said that spills from couplings and transfer hoses should be considered de minimis and therefore excluded. The United States General Accounting Office (G.A.O./ R.C.E.D.-91-161, Coast Guard: Oil Spills Continue Despite Waterfront Facility Inspection Program) has recently determined that more than half of the spills of oil at waterfront facilities occur during transfer operations. GLO has decided that such an exemption would be imprudent and inconsistent with the intent of the legislation.

Many commenters in §19.1(a)(18), Waste, suggested that defining waste was exclusively within the jurisdiction of the Texas Water Commission. The definition is applicable only to these regulations. The point was not entirely clear but the GLO is only regulating cleanup of oil spills and does not by these rules impact or affect the power or ability of other agencies to regulate waste disposal. Other commenters pointed out that the definition implied by omission that recycling was not acceptable or encouraged. In order to emphasize that waste minimization is an integral part of an appropriate cleanup response, the definition was changed to specifically mention recycling. One commenter regarding §19.1(a)(19), Worst case discharge, suggested that weather was irrelevant and should not have to be considered. Such a view undermines the concept of worst case scenario. The definition adopted in these rules is consistent with the federal definition and so was not changed.

Other comments were directed at weakening the definition by adding qualifiers such as "reasonably foreseeable" or "foreseeable in light of past history," or as a "25 year-24-hour rainfall event." These changes were not made because good response planning must include consideration of catastrophic events.

One commenter asked whether there is a required response time for a worst case discharge. The definition is not intended to outline all the parameters of contingency planning, therefore no change was made to address this issue.

Another commenter asked that the GLO define "adverse weather" and suggested that no one should have to respond in a hurricane. Nothing in this kind of contingency planning requires foolhardy or dangerous activities on the part of responders. The point is to have a plan in the event weather complicates response. No change is made in response to this comment

One commenter recommended adding equipment failure to the definition as a component of circumstances that could cause a worst case discharge. This addition was not made because it was not the intent of this definition to detail the mynad of circumstances which could cause such a discharge; rather, the phrase is used as a term of art defined only to provide a reference to the kind of planning that is required under the regulations.

Section 19.3 and §19.18, Audits, Drills and Inspections and Access to Property, generated many comments. Some indicated that there was no authority to conduct unannounced entries. However, OSPRA specifically authorizes them in §40.115. No change was made. Other commenters stated that the GLO is required to notify the owner prior to entry onto private property; again, no change was made because OSPRA specifically states that the commissioner need only make a reasonable effort to obtain the owner's consent. (OSPRA §40.007(d)). Changes were made to clarify the commissioner's authority. Several commenters noted that the taking of photographs may cause a safety hazard and that the GLO representatives must comply with applicable safety requirements of the facility. Changes were made to clarify that the GLO will comply with all federal and state safety requirements.

One commenter stated that the GLO representatives are not entitled to interfere with facility operations. While the GLO will make every reasonable effort not to disrupt business, a certain amount of interruption with operations may be the result of any administrative inspection. No change was made based on this comment because such a requirement would unreasonably limit the ability of the GLO to perform its statutory duties.

One commenter suggested that the GLO was required to split samples of substances or media taken during an audit or inspection. While nothing in the statute or common law imposes such a requirement, this may be an issue of concern in enforcement proceedings if there is a failure to preserve the samples. It is a policy issue and not a legal requirement, so no change was made.

Another commenter said that personnel interviews should be limited. Again, this is a policy matter and does not directly affect the validity of the regulation so it was not added. Changes were made which delineated the time, place, and scope of audits, inspections, and drills pursuant to the requirements of New York *v* Burger, 107 S.Ct. 2636 (1987).

One commenter concerning §19.11, Categories of Coastal Facilities, suggested that all facilities which store 1,100 gallons or less of oil be exempted even if they are industrial facilities and another commenter suggested that all facilities handling less than 10,000 gallons of oil be exempt. These comments were not adopted because in order to comply with the intent of the legislation the broader category of facilities should be included.

A commenter inquired whether or not public port authorities would be required to obtain certificates. These provisions would apply to a public entity to the extent that the entity has storage or transfer capacity of its own, apart from the storage and transfer capacity of its tenants. The issue of ownership of the land underlying a facility is addressed in the definition of owner/operator and there was no change made to this section.

A commenter questioned the distinction between intermediate and major facilities. These distinctions were reviewed and a change was made. Now, two categories of facilities must register: small and major. Application fees based on size remain the same. Because the national contingency plan categorizes the introduction of a spill in the 250,000 gallon range as a major spill, the GLO decided that facilities with this storage or transfer or throughput capacity should be certified at the level of a major facility.

Concerning, §19.12, Facility Certification, some commenters suggested that the applicable dates be changed to a time certain after the effectiveness of the rule. This change was made for ease of administration.

Other commenters pointed out that in order for facilities to submit a discharge contingency plan for approval, they needed the list of certified discharge cleanup operators. This change was made and, under the revisions herein, discharge cleanup operators will be certified prior to applications being due for facilities.

Some commenters pointed out that the regulations ought to specifically state that operations may continue pending review of their applications. The GLO intends to complete processing of all applications by January 1, 1993, and has made that date the deadline for allowing operations without a certificate. This change is reflected throughout the deadline dates previously set forth.

Comments were received criticizing the apparent requirement that both the owner or operator file for certification. A change was made to reflect the fact that while this may be required under some circumstances it will general rule.

Many comments were objections to the requirement of having the application signed by a person of the rank of at least vice-president. One particularly noted that the company may not even have a vice president in Texas or who is familiar with Texas law. This comment illustrates the point of the requirement which is to insure that the need for compliance with the statute and the regulations is noticed and addressed at a high managerial level. The GLO believes that compliance will receive greater attention when persons at the level of vice-president have direct responsibility, so no change was made.

A commenter noted that since fees are already assessed on oil storage tanks the additional fees imposed by this certification requirement should be deleted. However, the fee is a reasonable amount commensurate with processing costs and is specifically authorized by statute, so no change is made.

Most comments on §19.13 and §19.14, Applications for Small and Major Facilities, were in the nature of suggestions limiting the amount or kind of information required. Changes were made to add requirements specifically stated in OSPRA, §40.111.

Many commenters stated that the requirement of listing past discharges of oil and hazardous substances at the facility be deleted as being beyond the scope of the statute or limited to CERCLA reportable quantities. OSPRA states that in assessing penalties the commissioner shall consider past history, therefore, this information is relevant to carrying out the purpose of the law. The quantity of oil reportable under the statute is not related to any specific amount, thus all past oil discharges are relevant to determining prevention and containment capabilities. Similarly, past discharges of hazardous substances may indicate weaknesses in prevention or containment capabilities which need to be reviewed. Gathering this information is important for determining geographic response needs and priorities. One commenter inquired whether a facility would have to list permitted discharges. Discharges specifically authorized by permit are not requested here; however, any unpermitted discharge or discharge in excess of permitted levels should be reported under this section. Most entities keep spill logs and discharge monitoring reports that should ease the burden of compliance with this requirement. For these reasons the section was not amended.

Several commenters sought clarification of the need for relaying information related to the size of the largest vessel docking at the facility, but this is a statutory requirement and cannot be amended via regulation.

A few commenters challenged the need for the site plan to be certified by a registered professional engineer and stated that certification by any manager should suffice. This requirement is similar to many such requirements in federal regulations and insures protection for both the regulated entity and the government by having an independent assessment of the facility's site. Many facilities may not have ever assessed all of their storage, throughput, and transfer capabilities. This mandate insures accuracy.

Many comments asked that "environmentally sensitive" areas be mapped. This is an ongoing process that has not yet been completed. The comments on the "environmentally sensitive" definition were addressed in the definition section comments. A further definition of "in the vicinity of" is not deemed necessary since the language appears self-explanatory.

Some commenters indicated that the cost of a certified site plan for "pipelines" would be prohibitive, but neither the statute nor the regulations contemplate that all pipelines be plotted but only those located where a discharge therefrom would enter coastal waters. This is critical information for effecting prevention and response measures. Several comments from regulatory agencies asked for a clarifying statement regarding notification requirements. These entities wanted it made clear that notice to the GLO would not replace or supplant notice to them. Several comments from the regulated community took the opposite approach by inquiring whether the GLO will notify other agencies. Unfortunately, the multiple and duplicative reporting requirements cannot be remedied by regulation. However, OSPRA does mandate a statewide phone line for discharge reporting; this is to be part of the statewide discharge contingency plan now being developed.

One commenter suggested that material safety data sheets be submitted for describing the types of oil handled. This useful change was adopted.

One commenter suggested that requiring submission of an actual contract with a discharge cleanup operator may divulge information that is confidential. The language of the statutory provision allows for the submission of the "terms of the agreement" where the facility is a member of a discharge cleanup organization, but does not otherwise address this issue. The section was changed to allow disclosure requirements to be similar for all regulated entities.

Another commenter suggested that information supplied in the applicant's SPCC plan should not need to be duplicated. The GLO is also awaiting future changes in federal regulations which will address the impact of the Oil Pollution Act's effect on SPCC's requirements and is requiring submission of the SPCC plan. To the extent that it already contains the requested information in sufficient detail, a cover letter indicating where the information is located within the plan will satisfy these rules.

One commenter asked that a generalized description of facility maintenance be sufficient for information on schedules, methods, and procedures. A generalized description is not sufficient and this requirement is not being lessened because it is vital in determining prevention capabilities.

Concerning, §19.15, Issuance, Modification, and Suspension, one commenter noted that making a certificate voidable upon discovering that false information was intentionally submitted was not a serious enough response. In agreement with this observation, the section was changed. A certificate issued in reliance on information later proven to be fraudulently submitted is now considered void from the issuance date.

Many comments were received about the information considered to be material for the

purpose of reporting changes. The requirement that all personnel changes were considered material was challenged in these comments. The section was changed. Only changes that affect response capability need to be reported within 10 days.

Related comments suggested that 10 days was too short a period of time for reporting changes. Because changes affecting response capability go to the heart of the regulations no change in this deadline was made; however, routine personnel changes need no longer be reported within 10 days if they do not impact capability. The rule was changed to allow 30 days to report changes.

A few commenters suggested that the GLO alone should not determine adequacy of response, and that such a determination should be made in conjunction with the U S. Coast Guard. This change was not made because the GLO has independent authority under the statute and because the federal authorities do not respond to every spill of interest to the state.

A commenter inquired what level of management changes must be reported to GLO. Since the regulation discusses changes in "discharge prevention and response capability," the management levels relevant to that function from the lowest to the highest level should be reported.

One commenter remarked that the words "gas pipeline" should be removed from the section which describes review of applications by the Railroad Commission. The basis for the comment was that there can be no regulation of gas under the statute. Since this is statutory language and there can be discharges of oil from pumps and other appurtenances of gas pipelines, it is appropriate that such facilities be regulated.

One commenter noted that the introductory statement allowed the GLO to request more information to resolve questions regarding the application. This was seen as a method of continually asking for information until the certification was effectively barred. The GLO will not harass anyone in this manner and believes that the explicit delineation of this implicit authority was fair notice to the regulated community. No change was made.

Several commenters noted that a certificate should not be suspended in the event of a spill or any technical violation. Whether a violation is "technical" or integral to the regulatory scheme may be a matter of dispute. A spill that is the product of violations of the regulations may be cause for suspension. Each of these matters is for the sound discretion of the commissioner as he exercises his enforcement authority. In any event, the use of suspension, which effectively closes down a business, will be reserved for only the most serious matters. However, there may be instances where situations that endanger the public health, safety, or welfare or seriously impact natural resources or threaten to do so may call for a suspension.

One commenter noted that the authority to suspend certifications under OSPRA is narrower than that articulated here. Clarifying language was adopted in this section to conform to the statutory specificity.

Another comment stated that OSPRA only requires annual reporting of changes. However, the statute says that each registrant shall report annually on the status of its plan and its response capability. The statute does not prohibit the additional requirement of this section for reporting certain significant changes sooner. In addition, OSPRA, §40.110(b) specifically provides that the commissioner may review a certificate at "any time there is a material change in the terminal facility's discharge prevention and response plan or response capability." Many comments were received regarding the statement at §19.16(d), Person in Charge, regarding joint and several liability. The most prevalent remark was that OSPRA does not establish this kind of liability. However, a review of the statutory language at §§40.153, 40.202, and 40.251 indicates that joint and several liability is established. One commenter observed that criminal liability cannot be established without an act or omission by an individual. Another commenter opened that only managers should be held liable. This subsection was meant only to be a summary of statutory liability. The restatement did not affect any existing standards of liability and generated such controversy that it was deleted.

Several commenters suggested that there was no necessity for giving the name of the person in charge, but the GLO believes that the ability to rapidly contact the correct person is crucial in emergency response situations. This requirement was not deleted.

One commenter noted that a large corporation has many persons in charge on any one day and thus this section did not deal with the reality of large organizations. Several other commenters recommended that the person in charge be the person who can initiate response actions. The language of this section addresses both of these comments. The person in charge is whomever the facility designates to notify the GLO of a spill and to ensure compliance with OSPRA. The person in charge is also defined as the person who has independent authority to deploy response equipment and personnel and to expend funds for response. The section clearly states the role and powers of the person in charge. There was no change based on these comments.

The comments received relating to §19.17, Vessel Response Plan and Proof of Financial Responsibility, questioned the manner in which the GLO will regulate those vessels which are covered by state law but are not included in federal law. One comment pointed out that federal regulations for vessel response plans will not be promulgated until February 1993. The vessels currently covered by the state will not have to comply until GLO issues applicable rules. Interim rules may be issued prior to final federal rules. Some commenters suggested that vessels covered by state law should not have to have discharge response plans. However, no change was made since this is a statutory requirement.

One commenter stated that emergency response vessels that carry in excess of 10,000 gallons of fuel should not have to meet financial responsibility rules. Again, no change can be made because this is a statutory requirement.

One comment addressing §19.19, Denial of Entry Into Port, suggested that vessels not in compliance should be "impounded." Such an action may sometimes be appropriate and within the commissioner's authority but the GLO does not now adopt this as a rule or policy. No change is made in this section.

Another commenter questioned whether the denial would be coordinated with the U.S. Coast Guard. It is the current policy of the GLO to coordinate all its activities related to vessels with the appropriate federal authorities. One commenter inquired as to the methods the GLO will utilize in enforcing this section where vessels are covered only by state law and not federal law. No response is made to this comment since it is inappropriate to publicly discuss enforcement procedures.

Many commenters addressing §19.20, Certification of Discharge Cleanup Organizations, asked if cooperative associations were included. As the statutory definition includes cooperatives as well as "any group of...any...persons" organized for the purposes of spill response or natural resources rehabilitation and rescue, it is clear that the legislature intended this category to be very broad. A similar comment about the inclusion of "mutual aid organizations" is also referred to the statutory definition.

Several commenters stated that these certification requirements inhibited mutual aid. The reasons for this remark were not detailed. The language of the section was changed to make it clear that these requirements do not affect the "good samantan" provisions of the statute, nor do they prohibit an owner or operator from assisting another in an emergency situation. The section intends to set forth requirements for those who desire certification in order to be listed on a spill contingency plan, to be hired by the fund for response actions and to be recognized under the statute. No group or organization is required to be certified.

A few commenters recommended that "vacuum trucks" not be required to obtain certification. There does not appear to be any rational basis for exempting one category of spill responders from certifications and the statute includes a broad category. This change was not made.

Many commenters noted that requiring a plan for the disposal of waste generated from an unauthorized discharge of oil did not take into account the realities of transportation and waste disposal regulations. Apparently the difficulty involved in entry into the transportation business has resulted in cleanup organizations that are unable to transport the waste from the temporary staging area. The section was changed to reflect this problem and now only requires an ability to "arrange for disposal."

Many commenters indicated that discharge cleanup organizations should not be required to have ex officio representatives of local governments on their boards or governing

bodies. The requirement is statutory and cannot be limited by regulation.

Several of the commenters on this subsection indicated a misreading of the section. Changes were made to clarify that the requirement applies only to not-for-profit entities. The Marine Spill Response Corporation is specifically exempted by statute and the regulations cannot add further exemptions for similar groups. Further commenters on this subsection asked for a definition of local government. A definition was not provided because the meaning seems clear, but a change was made to indicate that the representatives should be from the same geographic area as that served by the organization. Other comments about volunteer organizations included requiring only those properly trained to engage in wildlife rehabilitation and rescue. This change was made to ensure that the Parks and Wildlife Department's rules are followed.

Another commenter recommended that volunteer groups not be allowed to participate in any response operations. Such a restriction was not included since there may be occasions when volunteers can contribute to beach cleaning or other useful operations.

One commenter suggested that the GLO require information about the organization's insurance coverage. This change was adopted.

Another commenter noted that organizations should have a health and safety plan and this addition was also made. Another additional requirement is that certified organizations have a waste minimization plan. This is important for the obvious environmental benefits derived from waste minimization and because it will contribute to lower cleanup costs by reducing the quantity of supplies utilized and lessening disposal costs. The subsection that resulted in the most negative comments was the one describing factors the GLO will utilize in determining certification. The subsection was changed to reflect the fact that the number of organizations already certified will be considered for the purpose of insuring adequate coverage of the coastal area and not for limiting competition.

Several commenters requested longer time periods for reporting changes and clarifying which changes need to be reported. An amendment was made to increase the time available for reporting changes to 30 days and to specify that a material change is a change which affects discharge response capability.

Many commenters concerning §19.31, Jurisdiction, asked for clarification of the word "threatening," as used in the rules, to discuss when a discharge threatens to enter coastal waters. This is included in this section and in the definition of facility. Comments addressing §19.32, Reporting an Unauthorized Discharge, indicated the belief that the regulations require reporting by both the person in charge and the person responsible for the discharge. It is correct that both persons have the duty to report, but both need not report, the same incident. Changes were made to clarify the existence of a dual duty but not of repetitive reporting.

Many commenters requested clarification of the requirement to report "immediately." Immediately is now defined to mean within one hour of the discovery of the discharge. Compliance with this time limit will include a review of whether appropriate monitoring and inspecting could have resulted in an earlier discovery. This and other factors were added to the definition of "immediately."

Several commenters were concerned with the imputation of compliance where a third party gives notice on behalf either the person in charge or the responsible person. The language was changed to clarify that the person who has the duty to report may delegate that task to another. The person with the duty will then be deemed to have complied. This does not mean that notification from a third party, not authorized or delegated by one with a duty, will meet the reporting requirements. This section is strictly interpreted because the statute creates strict criminal liability for knowing or having reason to know of a discharge and failing to report it. (OSPRA, §40.251(b)(2)).

Several commenters pointed out that, at the outset of a spill, one may not be able to accurately convey all of the information requested. In recognition of the incomplete information often available at the outset, this section was changed to impose a continuing duty to report material changes in the information requested. Upon the arrival of the state on-scene coordinator, the continuing duty to report new information ceases. The importance of continual reporting should be obvious when one considers that many large spills of oil and other hazardous substances are initially reported quite inaccurately. The necessity of appropriate response and the time needed for mobilization of resources mandates a continuing obligation to inform the GLO.

Many persons commented that requiring immediate notification of owners of property which may be damaged was onerous and unrealistic, given the remoteness of certain coastal areas. The language of this subsection was modified to make the requirement more realistic, and yet still achieve the objective of minimizing loss of property.

Concerning, §19.33, Response, several commenters requested a definition of "predominantly" in the phrase "predominantly a hazardous substance." A change was made to describe the factors which will be reviewed in making this determination. The natural resource trustees requested that the rules reflect the current practice of notifying them of unauthorized discharges. This change was made.

Many commenters asserted that the GLO did not have the authority, experience, or expertise to direct spill response and that the GLO cannot act without approval from the federal government. These commenters misinterpret specific statutory powers granted to the GLO to: "ensure the removal and cleanup of pollution from (oil) spills" (OSPRA, §40.002(b)(2)); to "direct all state discharge response and cleanup operations" (OSPRA, §40.004(a)); to "act independently to the extent no federal on-scene coordinator ...has assumed federal authority" (OSPRA, §40.102(c)) and to give "directions or orders" related to abating, containing, and removing pollution (OSPRA, §40.106(a)). No changes were made in response to these remarks.

A change to delineate the authority of the Railroad Commission was requested and made. Use of the phrase "response operations center" was discontinued to avoid confusion with similar language used by the Department of Public Safety.

Several commenters addressing §19.34, Duties of Responsible Person, questioned the need for reporting deviations from a contingency plan during response operations. The requirement remains because such information is necessary in order to assess the potential impacts of such deviations and because it is useful in measuring the original adequacy of the plan.

Some commenters asked for a delineation of factors which will be evaluated in determining the adequacy of response. Since the determination can seriously impact a responsible person, the section was changed to add certain factors.

One commenter suggested that the GLO should not require a response to small spills. Since a harmful quantity of oil is one defined as causing a "sheen" and since the discharge of any unpermitted amount violates the Clean Water Act, such a policy would be illegal as well as unwise.

One commenter noted that the statute allows the responsible person 48 hours to give written justification for refusal to comply with directions from the state on-scene coordinator. The rule was changed to conform to the statute.

Many commenters pointed out that §19.35, Assistance, was more restrictive than OSPRA regarding the ability of any person to offer assistance. The section was changed to clarify that it does not limit the statutory scheme. As rewritten, it is now consistent with the limited immunity provisions of the statute.

Several commenters suggested that there should not be a requirement that assistance be "cost-efficient" or "effective" for waiver of the prior authorization requirement. Such parameters are necessary to encourage prudent activities by those who respond prior to the arrival of governmental authorities. No change was made. One comment requested details on the method of authorization. Change were not made because such a determination depends on the exigencies of the situation and should remain within the sound discretion of the on-scene coordinators.

One commenter requested that certain operations such as vacuum trucks be allowed to respond without prior authorization. The section does not prohibit response by unauthorized parties, but such response may not be reimbursable from the fund. It may not come within the limited immunity provisions either unless the responder is acting on behalf of the responsible person or with authorization.

Many commenters were concerned that §19.36, Disposal, restricted the ability to recycle. The definition of waste in the definitions

section was revised to reflect this concern.

One commenter stated that only the responsible person can determine where the waste will be taken. This is clearly not so since both the Texas Water Commission and the Department of Health have jurisdiction over waste. There will also be times when there is no readily identifiable responsible person. One change was made to require that the on-scene coordinator be informed in writing of the final disposal site of the waste. The section was also changed to explicitly discuss the requirement of waste minimization and to require the removal of waste from the scene of the spill.

Several commenters addressing §19.37, Completion of Response, mentioned that the completion of response operations should consider the natural resource trustees' concerns. The section was amended to require consideration of these important interests. Some commenters recommended that trustees must concur concerning completion of the response. This change was considered too cumbersome as well as an abdication of the role of the on-scene coordinator, so it was not adopted.

Many commenters noted that 10 days was not enough time for a final report. This was changed to allow 30 days. Similarly, even 30 days is not enough to give an evaluation of damaged natural resources. The section was amended to require only preliminary listing of known damages.

Another commenter asked what methods would be used to determine that cleanup operations were complete. Rather than have detailed rules on cleanup standards at this point, the GLO will rely on the expertise of cleanup contractors, governmental agencies, and natural resource trustees in making this decision. The statewide contingency plan will enumerate these standards.

Concerning, §19.38, Remediation, one commenter suggested that the elements of a required remediation be further expanded and delineated. This section was intentionally written broadly pending development of federal natural resource damage assessment regulations mandated under the OPA.

A few commenters requested that the GLO formulate a remediation plan and/or give technical assistance. The function of developing a remediation plan may be assumed by the trustees but usually the responsible party is given the opportunity to present a plan. In the event that a responsible party does not present a remediation plan within the required time, the trustees, will proceed to do so. The trustees are available for technical guidance but this fact was not added to the rule. The language of the section was amended to emphasize the cooperative efforts of all state trustees, and to clarify that the GLO does not intend to approve plans or develop plans without the participation of all trustees.

One commenter suggested that responsible parties be allowed to appeal unrealistic plans and another suggested hearings on the type of plan required. This change was not adopted because it would further complicate an already complex procedure and would not advance the protection or restoration of natural resources. In practice, a responsible party need not participate in a plan developed by the trustees. Litigation in such an event will occur during any cost recovery action. There is no reason for allowing litigation at an earlier stage.

Several commenters requested that negotiation of a remedy acceptable to all be allowed. Although negotiation is always appropriate when agreed to by all parties and although the trustees are already empowered to negotiate, the change was made so that it is clear that the GLO and other trustees are not limited to any set number of methods for achieving a acceptable plan.

One commenter stated that "monitoring" alone should be all that is required. While there may be some instances where nothing more is needed, the rule does not attempt to define all the potential courses of action. Furthermore, to specifically mention that there may be an occasion where affirmative action is not required may create the false impression that this is a preferred method. No change was made because there are no other specific kinds of action delineated in the rule.

One commenter mentioned that a responsible party should be entitled to a "release" upon completion of the remediation plan. While this may in fact be the practice, there is no need to change this rule to make it include all the procedural and substantive practice that has developed in this area. These regulations will be revised to conform to the federal rules, therefore no change was made.

Section 19.52, Designation of the Responsible Person; Advertising Claims, was changed to comply with the stricter statutory requirements. The GLO must "immediately" designate a responsible person once there has been sufficient inquiry to make the determination. Several commenters requested guidance on the decision-making process. Certain review factors were therefore added to this subsection.

A few commenters objected to the direction to inform the GLO of "claims procedures." The statute is specific about time limitations and in order to ensure compliance with these limits an efficient method of handling claims is critical. No change was made since the GLO wants to maintain the ability to review claims procedures.

Several commenters complained about the requirement of radio and television advertisements of claims procedures. This was changed to make the direction discretionary with the GLO. One comment asked that "locality" be defined for notice purposes. A change was made to provide a definition.

There were many commenters objecting to the time limits set out in §19.53, Claims Procedures, but they cannot be changed since they are statutory.

The statute discusses a "reasonable response" to a claim within a certain time period; the regulation was drafted with the phrase "settled." This attempt to expedite the process was met with many commenters objecting to such a stringent timeline. Therefore, the section was changed to conform to statutory language.

One commenter stated that the GLO is limited in its authority to hear cases on damages and there should be a change to note that only "actual damages" may be claimed. Because the statute does not provide for punitive or nominal damages, this clarification seems unnecessary. No change is made. The statute does discuss consequential damages such as local governments' loss of taxes or the net costs of increased entitlement (OSPRA, §40.003(6)(A)(ii)). Since the statute delineates a broad category of damages that are recoverable, no specific limits are set in the rule.

A few commenters requested that the responsible party be given a copy of any claim submitted to the fund. Since the procedure is for the claimant to first present the claim to the responsible party, such a specific statement is unnecessary. Another commenter stated that the responsible party should be allowed to submit evidence to the GLO. The responsible party has the opportunity to challenge a proposed award amount and to have a hearing, so through discovery there is sufficient opportunity for the responsible party to be evaluate the claim.

One commenter suggested that claims be consolidated for the purposes of hearings. This is a reasonable comment, but the rules for hearings are already promulgated and a consolidation motion is for the sound discretion of the hearing examiner.

No one who commented opposed adoption of the chapter. Those who commented objected to or requested changes to specific sections or subsections. The following gave comments: Clean Gulf Associates; Office of Railroad Commission of Texas; Texas Mid-Continent Oil and Gas Association; Marine Spill Response Corporation; Internal Association of Drilling Contractors; Shell Oil Company; OMI Corporation; Texas Chemical Council; Texas Waterway Operators Association; Galveston Bay Foundation; The Port of Houston Authority; Marathon Oil Company; Dow Chemical Company; Gulf States Utilities Company; Haight, Gardner, Poor and Haven; Koch Industries, Inc.; Petroleum Marketers Association of America; Texas Water Commission; Port of Corpus Christi Authority; Amoco Corporation; Brownsville Navigation District; Canal Barge Company, Inc.; Lyondell Petrochemical Company; Star Enterprise; Exxon Company, U.S.A.; Texas Oil Marketers Association; West Gulf Maritime Association; Mobil Oil Corporation; Chevron U.S.A.; Georgia Gulf Corporation; The Frantz Co; Phillips Petroleum Company; Clark, Thomas, Winters and Newton; Texas Department of Public Safety; Texas Parks and Wildlife Department; BP Chemicals; Norse Shipping Houston, Inc.; International Technology Corporation;, Boeing Petroleum Services, Inc.; Maritrans Operating Partners L.P.; Koch Refining Company; Leboeuf, Lamb, Leiby and Macrae; BP America, Inc.; and INTERTANKO.

The new sections are adopted under the Natural Resources Code, §40.007, which authorizes the land commissioner to promulgate rules necessary and convenient to the admin-

istration of OSPRA.

§19.1. Purpose. This subchapter establishes a final rule under the Oil Spill Prevention and Response Act of 1991 (OSPRA), Texas Natural Resources Code, Chapter 40, which became law March 28, 1991. OSPRA supports and complements the Oil Pollution Act of 1990 (OPA), Public Law 101-380, which became law on August 18, 1990. This subchapter is intended to establish basic rules to provide for orderly and efficient administration of OSPRA until more comprehensive rulemaking can occur in coordination with the rulemaking process by federal agencies under OPA. The General Land Office intends to amend this subchapter in anticipation of and in response to federal rulemaking, as well as when development of Texas' own oil spill prevention and response program so requires.

§19.2. Definitions.

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

(1) Coastal waters–All tidally influenced waters extending from the head of tide in the arms of the Gulf of Mexico seaward to the three marine league limit of Texas' jurisdiction; and nontidally influenced waters extending from the head of tide in the arms of the Gulf of Mexico inland to the point at which navigation by regulated vessels is naturally or artificially obstructed. The term includes the entirety of the Gulf Intracoastal Waterway (GIWW) within Texas, and the following waters: Starting from Echo, Texas, 30 degrees 09'10"N 93 degrees 42'25"W (Orange County) and proceeding south on the Sabine River to the intersection with the GIWW, thence westerly along the GIWW, including Adams and Cow Bayous to the Highway 87 bridges, to Port Arthur. This includes the Neches River to a point 22 miles north, 30 degrees 07' 48"N 94 degrees 05'00"W. Then along the GIWW towards Port Arthur, including Taylors Bayou south of Highway 73. From Port Arthur along the GIWW to, and including, East Bay, Trinity Bay, Cedar Bayou to 29 degrees 44'55"N 94 degrees 55' 47"W, Lynchburg Canal to 29 degrees 41'00"N 94 degrees 59'00"W, to the San Jacinto River 2.5 miles NW of the I-10 bridge, Houston Ship Channel to the turning basin, thence 6.5 miles west on Buffalo Bayou at 29 degrees 46'00"N 94 20'46"W. The Houston Ship Channel includes: Buffalo Bayou to Highway 59, Brays Bayou to the Broadway Street Bridge, Sims Bayou to Highway 225, Vince Bayou to North Ritchie Street, Hunting Bayou to I-10, Greens Bayou to I-10, Boggy Bayou to Highway 225, Tucker Bayou to Old Battleground Road, Carpenter's Bayou to Sheldon Road, and General Land Office Title 31, Part I Chapter 19, Subchapter A Goose Creek to Highway 146. Proceed south and include Barber Cut, Bayport Channel, Clear Lake, Dickinson Bay, Moses Lake, Dollar Bay, Texas City Channel (including turning basin), Swan Lake, Jones Bay, and continuing at the junction of West Bay and the GIWW in Galveston. Continue westerly along the GIWW to the Port of Freeport, including Greens Lake, Chocolate Bay/Bayou to nine miles NW of the GIWW 29 degrees 14'42"N 95 degrees 13'30"W, the Old Brazos River and the New Brazos River up to the Missouri-Pacific Railroad bridge in Brazoria, and the Dow Barge Canal. Then southerly along the GIWW through and including, Jones Lake and Creek, the San Bernard River to Sweeney, Texas 29 degrees 03'55"N 95 degrees 40'15"W, Cowtrap Lake, Matagorda Bay, the Colorado River to the Port of Bay City 28 degrees 51'45"N 96 degrees 01'45"W, Culver Cut (West Branch Colorado River to 28 degrees 42'N and the entire middle branch), Crab Lake, Oyster Lake, Tres Palacios Bay to 28 degrees 47'N, Turtle Bay, Caranchua Bay, Keller Bay, Cox Bay, Lavaca Bay, Lavaca River to 28 degrees 50'N, Chocolate Bay/Bayou to 96 degrees 40'W, Powderhorn Lake, Robinsons Lake, Blind Bayou, La Salle Bayou, Broad Bayou, and Boggy Bayou. Continuing southerly on GIWW from Port O'Connor through San Antonio Bay, including, Guadalupe Bay, Mission Lake, Green Lake, Victoria Barge Canal, Guadalupe River to 28 degrees 30'N, Goff Bayou, Hog Bayou, Corey Bay, Buffalo Lake, Alligator Slide Lake, Twin Lake, Mustang Lake, and Jones Lake. Then continuing through Mesquite Bay including: Dunham Bay, Long Lake, Sundown Bay, and the Aransas Wildlife Refuge. Continuing southerly through Street Charles Bay including: Burgentine Bay/Burgentine Creek to 28 degrees 17'N, Salt Creek to 28 degrees 16'N, and Cavaso Creek to 97 degrees 01'W. Thence through Copano Bay including, Copano Creek, Mission Bay/River, Chiltipin Creek to 97 degrees 18'W, Aransas River to 97 degrees 18'W, Swan Lake, Port Bay, and Salt Lake. Then southerly including: Little Bay, Aransas Bay, Conn Brown Harbor, Redfish Cove, Redfish Bay, La Quinta Channel, Corpus Christi Bay, Nueces Bay, Nueces River to U.S. 77, Rincon Industrial Channel, Rincon Bayou, Tule Lake, Corpus Christi Inner Harbor, Oso Creek, Oso Bay, and Cayo Del Oso. Continuing south, through and including, Packery Channel, Laguna Madre, Baffin Bay, Alazan Bay, Cayo del Hinoso, Petrolino Creek, Cayo Del Infiernillo, Cayo del Grullo, Laguna Salada, Laguna de los Olmos, and Comitas Lake. Continuing through the Laguna Madre to Redfish Bay, Port Mansfield Harbor, Four Mile Slough, Arroyo Colorado River to Harlingen 26 degrees 11'53"N 97 35'57"W, Laguna Atascosa, Arroyo Colorado Cutoff, El Realito Bay, Laguna Vista Cove, Port Isabel Harbor, Brownsville Ship Channel, Bahia Grande, Vadia Ancha, San Martin Lake, and South Bay. Where the coastal area is defined by a body of water such as a bay or lake, it includes any small bays or lakes encompassed therein.

(2) Commissioner–The commissioner of the General Land Office.

(3) Discharge cleanup organization–A corporation, partnership, proprietorship, organization, or association that intends to make itself available to engage in response actions to abate, contain, or remove an unauthorized discharge or pollution or damage from an unauthorized discharge.

(4) Environmentally sensitive areas–Streams and water bodies, aquifer recharge zones, springs, wetlands, agricultural areas, bird rookeries, endangered or threatened species (flora and fauna) habitat, wildlife preserves or conservation areas, parks, beaches, dunes, or any other area protected or managed for its natural resource value.

(5) Facility–

(A) Any pipeline, structure, equipment, or device used for handling oil, including, but not limited to, underground and aboveground tanks, impoundments, mobile or portable drilling or workover rigs, barge mounted drilling or workover rigs, and portable fueling facilities located offshore or on or adjacent to coastal waters as defined in paragraph (1) of this subsection or any place where a discharge of oil from the facility could enter coastal waters or threaten to enter coastal waters.

(B) A discharge threatens to enter coastal waters when the failure to abate or contain it allows it to enter coastal waters within 12 hours.

(C) A combination of interrelated or adjacent tanks, impoundments, pipelines, gathering lines, flow lines, separator or treatment facilities, and other structures, equipment, rolling stock, or devices under common ownership generally will be considered a single facility under OSPRA. The term includes facilities owned by units of federal, state, or local government as well as privately owned facilities.

(6) Fund–The coastal protection fund established under OSPRA.

(7) Federal fund–The oil spill liability trust fund established under OPA.

(8) Handle–To transfer, transport, pump, treat, process, store, dispose of, drill for, or produce.

(9) Harmful quantity of oil–The presence of oil from an unauthorized discharge in a quantity sufficient either to create a visible film or sheen upon or discoloration of the surface of the water or a shoreline, tidal flat, beach, or marsh, or to cause a sludge or emulsion to be deposited beneath the surface of the water or on a shoreline, tidal flat, beach, or marsh.

(10) National contingency plan–The plan prepared under the Federal Water Pollution Control Act (33 United State Code, §1321 et seq) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 United State Code, §9601 et seq), as revised from time to time.

(11) OPA–The Oil Pollution Act of 1990, Public Law 101-380.

(12) OSPRA–The Oil Spill Prevention and Response Act of 1991, Chapter 40, Natural Resources Code.

(13) Owner or operator–Any person, individual, partnership, corporation, association, governmental unit, or public or private organization of any character:

(A) owning, operating or responsible for operating, or chartering by demise a vessel;

(B) owning, operating, or responsible for operating a facility; or

(C) operating a facility by lease, contract, or other form of agreement. The term does not include a person who owns only the land underlying a facility or a person who owns only a security interest in a vessel or facility if the person does not participate in the operation of the vessel or facility, does not own a controlling interest in the owner or operator of the vessel or facility, and is not controlled by or under common ownership with the owner or operator of the vessel or facility.

(14) Regulated vessel–A vessel with a capacity to carry 10,000 U.S. gallons or more of oil as fuel or cargo.

(15) Unauthorized discharge–Discharges excluding those of authorized by and in compliance with a government permit, seepage from the earth solely from natural causes, and unavoidable, minute discharges of oil from a properly functioning engine, of a harmful quantity of oil from a vessel or facility either:

(A) into coastal waters; or

(B) on any waters or land adjacent to coastal waters where harmful quantities of oil may enter coastal waters or threaten to enter coastal waters if the discharge is not abated nor contained and the oil is not removed.

(16) Underwriter–An insurer, a surety company, a guarantor, or any other person, other than an owner or operator of a vessel or facility, that undertakes to pay all or part of the liability of an owner or operator.

(17) Waste–Oil or contaminated soil, debris, and other substances removed from coastal waters and adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes in response to an unauthorized discharge. Waste means any solid, liquid, or other material intended to be disposed of or discarded and generated as a result of an unauthorized discharge of oil. Waste does not include substances intended to be recycled if they are in fact recycled within 90 days of their generation or if they are brought to a recycling facility within that time.

(18) Worst case unauthorized discharge–The largest foreseeable unauthorized discharge under adverse weather conditions. For facilities located above the high water line of coastal waters, a worst case discharge includes those weather conditions most likely to cause oil discharged from the facility to enter coastal waters.

(b) All other terms used in this chapter and defined in OSPRA have the meaning assigned to them by OSPRA.

§19.3. Inspections and Access to Property.

(a) Officers, employees, or authorized agents of the General Land Office (GLO) may enter and inspect any land, building, facility, vessel, device, equipment, or other property to respond to an unauthorized discharge, to determine compliance or noncompliance with the Oil Spill Prevention and Response Act of 1991 (OSPRA) or any rule, order, or certificate issued under OSPRA, to ascertain discharge prevention and response capability, and to assess natural resources damages. Drills, audits, and inspections may be announced or unannounced. If unannounced, GLO will make a reasonable effort to obtain the consent of the owner of the vessel or facility prior to entry. In the event of a response to an unauthorized discharge of oil or the threat of an unauthorized discharge of oil, GLO will also make a reasonable effort to obtain consent; this effort will be consistent with the need for prompt abatement and containment actions for the protection of health, safety, and natural resources. A reasonable effort to obtain consent means that a readily identifiable owner or owner's representative has been afforded the opportunity to accompany GLO during the audit or inspection or to be kept informed of GLO activities during a response event.

(b) The GLO's officers, employees, and agents will present credentials and explain the purpose and scope of the requested entry onto private property. Upon gaining access to the property, GLO's representative may:

(1) sample and test any substance or environmental media;

(2) observe the performance of equipment;

(3) take photographs and videotapes and other recordings;

(4) review and copy documents;

(5) inspect discharge prevention and response equipment and supplies;

(6) inspect containment and drainage areas and any other portion of the facility or vessel where oil is handled.

(c) The GLO's officers, employees, and agents must observe a vessel's or facility's standard safety requirements. Standard safety requirements as set forth in OSHA and applicable regulations or in any State of Texas statute or rule will be observed. Any additional or other requirement imposed by the owner or operator will be observed only to the extent that it does not unreasonably hinder the objective of the authorized entry.

§19.4. Waiver.

(a) Upon written request, the commissioner may waive a provision of this chapter if the commissioner determines that the application of the provision would be inconsistent with the fundamental intent and purpose of the Oil Spill Prevention and Response Act of 1991.

(b) Where adequate precautions are taken to avoid environmental and property damage and other necessary governmental agencies have consented, the commissioner may allow the discharge of limited amounts of oil into or upon coastal waters or adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes, as part of a drill, demonstration of response capability or technology, or other study or project to further discharge prevention or response capability.

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201535 Garry Mauro
Commissioner
General Land Office

Effective date: February 21, 1992

Proposal publication date: September 9, 1991

For further information, please call: (512) 463-5394

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Subchapter B. Spill Prevention and Preparedness

• 31 TAC §§19.11-19.20

The sections as adopted under the Natural Resources Code, ™40.007, which authorizes the commissioner to promulgate rules necessary and convenient to the administration of the OSPRA.

§19.11. Categories of Coastal Facilities.

(a) There are three types of coastal facilities: exempt, small, and major. Coastal facilities are classified according to oil storage and transfer capacity. Small and major facilities are regulated under this subchapter.

(b) Exempt facilities are farm or residential tanks with a capacity of 1,100 U.S. gallons or less that are used for storing oil for farm or residential purposes only. An owner or operator of an exempt facility is not required to obtain a discharge prevention and response certificate or have a discharge prevention and response plan or proof of financial responsibility.

(c) Small facilities are facilities, other than exempt facilities, that have a storage or daily transfer capacity not exceeding 10,000 U.S. gallons of oil.

(d) Major facilities are facilities that have a oil storage or daily oil transfer capacity of more than 10,000 U.S. gallons.

§19.12. Facility Certification.

(a) The owner of a regulated facility must apply to the General Land Office (GLO) for a discharge prevention and response certificate six months after this rule becomes final. No facility may commence or continue operations after January 1, 1993, without a discharge and response certificate issued by GLO. Application forms are available from the General Office, Oil Spill Response Prevention and Response, 1700 North Congress Avenue, Room 740, Austin, Texas 78701-1495.

(b) In the case of a facility whose owner is a different person or entity than its operator, the commissioner may require both the owner and operator to file an application for certification. The commissioner may also require only one of the parties to file an application.

(c) For corporate applicants, the application must be signed by an officer of at least the rank of vice-president. For partnerships, the application must be signed by a partner. All applications must also be signed by the person responsible for operation of the facility; this includes, for example, the facility manager, or an area manager if the facility does not have management on site.

(d) An applicant for a discharge prevention and response certificate must pay an application fee when the application is filed. The amount of the fee is determined by the type of regulated facility, as follows:

(1) $100 for small facilities that have a storage or daily transfer capacity not exceeding 10,000 U.S. gallons;

(2) $1,000 for major facilities that have a storage or daily transfer capacity not exceeding 250,000 U.S. gallons; and

(3) $2,500 for all other major facilities.

(e) A regulated facility may not handle oil after January 1, 1993, without a discharge prevention and response certificate issued by GLO.

§19.13. Applications for Small Facilities. All applicants for certification as small facilities must submit the following information:

(1) the names and addresses including street address and directions from the nearest highway of the facility, the owner of the facility, the operator of the facility, the person or persons in charge required by §19.16 of this title (relating to Person in Charge), and the registered agent for service as required by the Oil Spill Prevention and Response Act of 1991;

(2) a description of the facility, including:

(A) the date the facility began operations under the current owner or operator, whichever is earlier, the types of oil handled, the material safety data sheets for all the types of oil handled, the oil storage and transfer capacity, the throughput capacity, and the average daily throughput; and

(B) the location of the facility by latitude and longitude, N.A.D. 27 or N.A.D. 83 or by state plane coordinates indicating zone or by Universal Transverse Mercator coordinates indicating zone and all environmentally sensitive areas that would be affected by a worst case discharge from the facility;

(3) proof of financial responsibility as required by regulations either adopted or continued in effect under the Oil Pollution Act of 1990, Public Law 101-380, §1016 (33 United State Code, §2716), if applicable to the facility;

(4) a copy of the applicant's current discharge prevention and response plan required by the Federal Water Pollution Control Act, §311(j) (33 United States Code, §1321), including the spill prevention containment and countermeasure plan required by 40 Code of Federal Regulations to the facility; if applicable

(5) either a discharge response contract or a basic ordering agreement with a discharge cleanup organization or other person or the terms of any such contract or agreement showing capability to respond to a worst case discharge at the facility, or proof that the applicant can independently so respond;

(6) an estimate of a worst case discharge for the facility, including the rationale used to establish the estimate;

(7) a list of both oil and hazardous substance discharges at the facility within the previous year; and

(8) a list of environmental permits and registration or identification numbers that have been applied for or obtained for the facility, including those for wastewater discharges, air emissions, handling of solid or hazardous waste, injection wells, and underground or aboveground storage tanks.

§19.14. Applications for Major Facilities. All major facility applications must contain the following information:

(1) the names and addresses including street address and directions from the nearest highway of the facility, the owner of the facility, the operator of the facility, the person or persons in charge required by §19.16 of this title (relating to Person in Charge), and the registered agent for service as required by the Oil Spill Prevention and Response Act of 1991;

(2) a description of the facility, including:

(A) the date the facility began operations under the current owner or operator, whichever is earlier, the types of oil handled, the material safety data sheets for all the types of oil handled, the oil storage and transfer capacity, the throughput capacity, and the average daily throughput; and

(B) the location of the facility by latitude and longitude, N.A.D. 27 or N.A.D. 83 or by state plane coordinates indicating zone or by Universal Transverse Mercator coordinates indicating zone and all environmentally sensitive areas that would be affected by a worst case discharge from the facility;

(C) the dimensions and oil

capacity of the largest vessel docking or providing service at the facility and a description of the vessels under the operational control of the facility;

(D) a site plan of the facility certified by a registered professional engineer or registered public land surveyor showing:

(i) the location of all structures in which oil is handled and vessel and tank car or truck transfer areas;

(ii) vicinity maps showing vehicular access to the facility, pipelines to and from the facility, nearby environmentally sensitive areas, and nearby residential or other populous areas; and

(iii) drainage and diversion plans of the facility, such as sewers, outfalls, catchment or containment systems or basins, diversion systems, and all watercourses into which surface runoff from the facility drains (all of which may be shown on the site plan or maps); and

(E) the most recent available aerial photographs;

(3) proof of financial responsibility as required by regulations either adopted or continued in effect under the Oil Pollution Act of 1990, Public Law 101-380, §1016 (33 United States Code, §2716), if applicable to the facility;

(4) the number and qualifications of personnel employed at the facility with discharge prevention and response duties;

(5) current discharge prevention or response training programs and requirements for the facility's personnel and for outside contractors working at the facility;

(6) a statement of the applicant's discharge prevention and response capability, including:

(A) a statement of whether the applicant's response capability will primarily be based on contracts or agreements with third parties or on the applicant's own personnel and equipment;

(B) a copy of the applicant's current discharge prevention and response plan required by the Federal Water Pollution Control Act, §311(j) (33 United States Code, §1321), including the spill prevention containment and countermeasure plan required by 40 Code of Federal Regulations 112.3, if applicable to the facility;

(C) a description of the facility's preventive measures, including:

(i) leak detection and discharge prevention safety systems, devices, equipment, or procedures;

(ii) schedules, methods, and procedures for testing, maintaining, and inspecting storage tanks, pipelines, and other structures within or appurtenant to the facility that contain or handle oil;

(iii) schedules, methods, and procedures for conducting discharge response drills;

(D) a description of the facility's response plan, including:

(i) planned response actions, the chain of command, lines of communication, and procedure for notifying the General Land Office in the event of an unauthorized discharge;

(ii) response equipment and supplies available to respond to an unauthorized discharge at the facility, its ownership and location, and the time required to deploy it at the facility;

(iii) plans for sampling, testing, and measuring the volume of substances discharged;

(iv) plans for the recovery, storage, separation, transportation, and disposal of waste from an unauthorized discharge;

(v) the probable direction and rate of flow for unauthorized discharges at the facility;

(vi) plans for protection of environmentally sensitive areas in the event of an unauthorized discharge; and

(vii) plans for providing emergency medical treatment, site safety and security, and fire prevention in the event of an unauthorized discharge;

(7) any discharge response or cleanup contracts or basic ordering agreements, or the terms of either, the applicant has with a discharge cleanup organization or other person;

(8) an estimate of a worst case discharge for the facility, including the rationale used to establish the estimate;

(9) a list of both oil and hazardous substance discharges at the facility within the previous year;

(10) a list of environmental permits and registration or identification numbers that have been applied for or obtained for the facility, including those for wastewater discharge, air emissions, handling of solid or hazardous waste, injection wells, and underground or aboveground storage tanks.

§19.15. Issuance; Modification and Suspension.

(a) Prior to issuance or denial of a certificate, the General Land Office may require an applicant to submit additional information to resolve any substantial questions concerning the applicant's discharge prevention and response capability. The GLO may also require an applicant to develop and implement additional discharge prevention and response measures to achieve adequate discharge prevention and response capability.

(b) The GLO will issue certificates to those facilities that submit completed applications unless the preponderance of all evidence demonstrates the applicant lacks the capability to respond adequately to a worst case unauthorized discharge at the particular facility.

(c) If GLO refuses to issue a certificate to an applicant, the applicant may request and is entitled to a hearing on the denial in the same manner provided for certificate suspensions under Chapter 21 of this title (relating to Oil Spill Prevention and Response Hearings Procedures).

(d) At least 30 days prior to issuance or renewal of a certificate for an oil or gas pipeline or a facility used in the exploration, development, or production of oil or gas, the GLO will send the Railroad Commission a copy of the application for review and comment.

(e) The certificate will be issued for a term of five years. The GLO may issue certificates on terms and conditions appropriate to the facility or type of facility. All certificates are subject to review and modification by the GLO in the event of a material change in spill response capability. All certificates are subject to suspension in the event the registrant violates the Oil Spill Prevention and Response Act of 1991 (OSPRA), rules or orders adopted or issued thereunder, or any requirement of the facility's certificate. A certificate may also be suspended if a registrant does not have a discharge response plan or does not have adequate containment, prevention, or cleanup ability. A certificate is void ab initio if the registrant knowingly submitted false information in the application for the certificate or in support of the application.

(f) Material changes in discharge prevention and response capability include, among other things:

(1) changes in the facility's oil storage or handling capacity, discharge response equipment, or its construction, operation, or maintenance that materially affect discharge prevention and response capability or the risk of an unauthorized discharge;

(2) closure of the facility or a change of the facility's person in charge,

management, ownership, or key response personnel;

(3) a material change in the discharge cleanup organization listed as the primary basis of a facility's discharge response capability (see §19.20(h) of this title (relating to Certification of Discharge Cleanup Organizations));

(4) a determination by GLO that the owner or operator responded inadequately to an unauthorized discharge at the facility; or

(5) promulgation of federal rules under OPA, substantial amendments to this chapter or other changes in applicable law.

(g) Registrants must report changes in discharge prevention response capability.

(1) Except for subsection (f)(4) and (5) of this section, a registrant must inform GLO in writing of a material change in response capability within 10 days of the change. Personnel changes must be reported within 30 days unless they affect spill response capability.

(2) Each registrant must report annually any changes in the information in its application for a certificate. The report must be in writing and must be filed by the anniversary of the date the certificate was issued.

(h) Issuance of a certificate does not estop the state in an action brought under OSPRA, or any other law, from alleging a violation of any such law, other than failure to have a certificate.

§19.16. Person in Charge.

(a) Upon applying for a certificate, the applicant must designate a person or persons in charge of the facility for purposes of ensuring that General Land Office (GLO) is notified of unauthorized discharges at the facility and that the facility meets all other requirements of the Oil Spill Prevention and Response Act of 1991 (OSPRA). The designation must be by name and by job title.

(b) A facility must have a person in charge at the facility at all times the facility is normally attended by personnel. For those facilities or at those times at which personnel are not normally present, the facility must at all times have a person in charge on call and capable of travelling to the facility to respond to an actual or threatened unauthorized discharge. The person in charge must have the independent authority to deploy response equipment and personnel and to expend funds for response actions.

(c) It is the duty of the owner and the operator of the facility to inform the person in charge of the duties established under OSPRA and this chapter for persons in charge with respect to unauthorized discharge prevention and response.

§19.17. Vessel Response Plans and Proof of Financial Responsibility. Regulated vessels operating in coastal waters must have response plans as required by the Federal Water Pollution Control Act, §311 (33 United States Code, §1321) and proof of financial responsibility as required by the Oil Pollution Act of 1990, Public Law 101-380 (OPA) §1016 (33 United States Code, §2716). Regulated vessels are those vessels whose capacity to carry oil as fuel or cargo exceeds 10,000 U.S. gallons. Those vessels covered by the Oil Spill Prevention and Response Act of 1991 (OSPRA) but not by OPA will be required to meet the financial responsibility requirements of OSPRA, §40.202(a) (1) and (2) when rules are adopted under that section. Those vessels will also be required to meet the vessel contingency plan requirements of §40.114 when rules are adopted thereunder.

§19.18. Audits, Drills, and Inspections to Determine Prevention and Response Capability.

(a) An audit is a full review of a facility's or vessel's compliance with the requirements of the Oil Spill Prevention and Response Act of 1991 (OSPRA) and regulations adopted pursuant thereto. An audit may be announced or unannounced. Audits will be commenced between the hours of 7 a.m. and 6 p.m. The owner and/or operator of the facility or vessel subject to audit must produce records related to unauthorized discharges of oil into coastal waters, discharge contingency plans, equipment inventory, maintenance and repair, material safety data sheets for oil handled, oil storage and throughput, financial responsibility, personnel certification and training, and daily records and other documents and records containing information relevant to compliance with OSPRA. The representative of the General Law Office (GLO) conducting the audit is authorized to view all equipment at the facility that is available for responding to unauthorized discharges of oil. The GLO representative is authorized to enter any portion of the facility and vessel where oil is handled and where discharge prevention and response equipment and supplies are stored and maintained. Although the audit may be unannounced, prior to entering the facility, the GLO representative will make a reasonable effort to obtain the consent of the owner or operator or his representative.

(b) An inspection is a review of a specified area or areas of a facility or vessel for a specified purpose. An inspection may be announced or unannounced. The GLO will make a reasonable effort to obtain the consent of the owner or operator or a representative of either prior to entering property to conduct the inspection. The inspection will be commenced between the hours of 7 a.m. and 6 p. m. At the commencement of the inspection, the GLO representative will inform the owner or operator of the area or areas to be inspected and the purpose of the inspection. The areas and purposes of an inspection are limited to those set forth in subsection (a) of this section.

(c) A drill is a test of equipment and personnel in operation. A drill is in response to a mock discharge which is conducted by GLO representatives who determine the extent and parameters of the exercise. A drill may be announced or unannounced. Prior to entering property in order to conduct the drill, GLO will make a reasonable effort to obtain consent of the owner or operator or representative of either to enter the property. Drills will be commenced between the hours of 7 a.m. and 6 p. m. and all drills involving vessels will be conducted in cooperation with the United States Coast Guard. A drill involving a facility will be conducted in cooperation with any other governmental agencies whom GLO intends to involve in the mock operation.

(d) A vessel or facility will not be subjected to more than a total of two audits and/or drills in one 12-month period. This limitation will not apply to any vessel or facility that has violated OSPRA, any regulation promulgated thereunder, or any order of the commissioner.

(e) The owner or operator of the vessel or facility must bear its own costs of the audit, drill, or inspection and may not be reimbursed its costs from the fund.

(f) Performance of an audit, drill, or inspection does not estop the state in an action brought under OSPRA or any other law from alleging a violation of OSPRA or any such law.

§19.20. Certification of Discharge Cleanup Organizations.

(a) Persons or organizations desiring certification as discharge cleanup organizations must apply to the General Land Office (GLO) before June 15, 1992. Application forms are available from GLO.

(b) After August 1, 1992, a discharge cleanup organization must be certified by the GLO to be listed by an owner or operator as a source of adequate response equipment and/or personnel in a facility or vessel discharge prevention and response plan.

(c) An owner or operator of the facility or vessel will not be required to comply with this section if its response activities are limited to its own unauthorized dis-

charges or to assistance rendered to others in emergency situations. The requirements of this section apply to those organizations who engage in the business of emergency spill response and cleanup operations.

(d) Discharge cleanup organizations will be categorized as either industry or volunteer.

(1) Industry organizations are those entities capable of containing, abating, removing and disposing of, or arranging for the disposal of oil and waste from an unauthorized discharge. Industry organizations have personnel trained pursuant to 29 Code of Federal Regulations, §1910.120 and subsequent revisions and have equipment or access to equipment sufficient to perform response operations pursuant to national and state contingency plans.

(2) Volunteer organizations are those entities whose primary purpose is protecting, rescuing, or rehabilitating wildlife and natural resources injured or damaged by an unauthorized discharge. Volunteer organizations must be permitted by the Texas Parks and Wildlife Department or have certification from an organization with equivalent standards for the purposes of wildlife rehabilitation and other response activities concerning rescuing of any animal affected by a discharge. Volunteer organizations are also those entities who assist in other response activities approved by the on-scene coordinator but who do not receive compensation for their efforts.

(e) Industry organizations must be certified by GLO in order to be listed on a vessel or facility discharge response plan, and in order to be employed by GLO when it expends fund monies in response to a discharge. Certificates will be issued for a three-year term with annual review. Certificates may be suspended if the discharge cleanup organization fails to maintain adequate response capability. Pursuant to §21.1 et seq of this title (relating to Oil Spill Prevention and Response Hearing Procedures) the notice of suspension can be challenged.

(f) Applicants for certification as an industry organization must submit the following information:

(1) the applicant's name and address, its legal form or status, the names and addresses of the persons owning or operating the organization, and its membership if applicable;

(2) the geographic area the applicant will serve;

(3) the equipment and supplies owned by the applicant and available for abatement, containment, and removal of pollution from an unauthorized discharge of oil; if the applicant intends to rely in whole or in part on equipment and supplies owned by a separate entity then the applicant must submit the name of the owner and the location of the equipment and supplies, and the procedure for accessing such equipment and supplies;

(4) a certified statement of the applicant's general liability insurance coverage, and workmen's compensation and automobile liability insurance coverage;

(5) the number of employees and whether they are employed on a full- or part-time basis and the number of employees which the applicant can command in the event of a major spill event; the training of such personnel including whether they have received training pursuant to 29 Code of Federal Regulations, §1910.120; the experience and other relevant qualifications of all personnel;

(6) the applicant's standard operating plan for containment, recovery, storage, separation, transportation, disposal or arrangements for disposal or recycling of oil or waste, and minimization of waste generated from an unauthorized discharge.

(7) the applicant's health and safety plan;

(g) In certifying industry organizations, GLO will consider factors including:

(1) the applicant's size, membership, and quality of response capability (which includes among other things the experience of the applicant's owners, operators, and personnel, the applicant's ability to properly dispose of waste or to arrange for the proper disposal of waste and recycling of materials generated by the discharge, the plan for waste minimization from discharges, the quantity and quality of equipment or supplies owned or available to the applicant, and the proximity of such equipment and supplies to the area the applicant intends to serve); and

(2) the geographic distribution of discharge cleanup organizations in the coastal area for the purpose of insuring sufficient response capability;

(h) Industry organizations must report material changes in response capability to GLO within 30 days of the change. Material changes in response capability include among other things:

(1) a change in the location or a significant change in the quantity of the organization's response equipment or supplies; or

(2) a change in the organization's ownership or full-time personnel to the extent that such change affects discharge response capability it shall be reported within 72 hours.

(i) Volunteer organizations who register with GLO are considered certified. Registration forms are available from GLO. The registration must include the organization's size, experience in discharge response, ability to properly dispose of or arrange for the disposal of waste from discharges, the qualifications of persons who will lead or coordinate response activities for the organization, and the quantity and quality of equipment and supplies owned or available to the organization. Volunteer organizations engaged in wildlife rescue or rehabilitation will be certified only if they comply with requirements of the Texas Parks and Wildlife Department's regulations related to such organizations or with equivalent regulations. The GLO may suspend a certificate if the organization's response activities are inconsistent with state or federal requirements.

(j) Volunteer discharge cleanup organizations or any discharge cleanup organization that is a not-for-profit entity must appoint a minimum of two ex officio representatives from local governments to its governing body to advise it on discharge response matters. The representatives from local government may be from any level or agency of local government but must be from the geographic area to be served by organization. The Marine Spill Response Corporation and for profit entities are exempt from this requirement pursuant to the Oil Spill Prevention and Response Act of 1991, §40.117(b).

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201536 Garry Mauro
Commissioner
General Land Office

Effective date: February 21, 1992

Proposal publication date: August 9, 1991

For further information, please call: (512) 463-5394

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Subchapter C. Spill Response

• 31 TAC §§19.31-19.39

The new sections are adopted under the Natural Resources Code, §40.007, which authorizes the commissioner to promulgate rules necessary and convenient to the administration of OSPRA.

§19.31. Jurisdiction. The General Land Office (GLO) has jurisdiction over and will respond to any actual or threatened unauthorized discharge that enters or threatens to enter coastal waters. A discharge threatens to enter coastal waters when the location and direction of the flow of the discharge, if left unabated, would enter coastal waters within 12 hours.

§19.32. Reporting an Unauthorized Discharge.

(a) To report an actual or threatened unauthorized discharge, phone the General Land Office (GLO) at 1-800-832-8224. This line will be staffed at all times.

(b) The person in charge of the facility or vessel from which an unauthorized discharge emanates or threatens to emanate and the person responsible for the discharge both have the duty to immediately report the discharge to GLO. Reporting by either of those persons or by an employee or agent of either shall satisfy the notice requirement.

(c) Immediately, for purposes of this section, means within one hour of the time the discharge is discovered. In determining immediate notification GLO will consider the need for initial abatement, containment, and response actions, the accessibility of communication devices and the reasonableness of the person's efforts to immediately report, and whether the discharge could reasonably have been discovered earlier.

(d) Notification by any person who has been authorized or requested by the person in charge or by the responsible person to give notice of the discharge shall be imputed to the person who has the duty to report for purposes of determining compliance with this section.

(e) The notification, in order to be deemed complete, shall accurately describe the following:

(1) the substance and quantity actually discharged or potentially dischargeable and the rate of discharge;

(2) the time, location by latitude and longitude, N.A.D. 27 or N.A.D. 83 or by state plane coordinates indicating zone or by Universal Transverse Mercator coordinates indicating zone, if known, and the apparent cause of the actual or potential discharge;

(3) the size of the area actually impacted by the discharge and the area potentially impacted and whether or not any environmentally sensitive areas will be affected;

(4) the nature of any response actions undertaken and the identity of the person or discharge cleanup organization engaged or engaging in response activities;

(5) the name and title of the responsible person, the person in charge, and the person reporting the discharge; and

(6) the manner in which the responsible person and the facility or vessel involved in the actual or threatened discharge may be contacted.

(f) The duty to report is a continuing one where any material changes occur prior to the arrival of a state on-scene coordinator. Material changes include, but are not limited to, changes in the quantity, quality, or location of the discharge event. Both the responsible person and the person in charge have the duty to report material changes to GLO.

(g) If an unauthorized discharge threatens to damage or pollute property other than that of the owner or operator or responsible person, the person in charge and the responsible person must make reasonable efforts to notify the owners of property threatened by the discharge. A reasonable effort to notify includes taking steps to identify and contact such owners within a time period that allows them to take measures to minimize damage to their property. In determining compliance with this requirement, the location of the discharge and the accessibility of ownership information will be considered.

(h) If the discharge immediately threatens public health, safety, or welfare, then the responsible person and the person in charge must notify the appropriate local health, fire, and law enforcement authorities.

§19.33. Response.

(a) When the General Land Office (GLO) receives notice of an actual or threatened unauthorized discharge, GLO will determine whether state response action is required. If state response action is required, GLO will assess the discharge and determine whether further response actions should be initiated or required. If assessments of the discharge indicate it involves predominantly a hazardous substance, GLO shall coordinate all response actions until the Texas Water Commission can assume responsibility over hazardous substance discharge response operations. A substance is predominantly a hazardous substance when analytical testing of a representative sample indicates the presence of more than 50% of a substance that is not oil as defined by the Oil Spill Prevention and Response Act of 1991, and that is a hazardous substance as defined by the Texas Water Commission or its successor agency. Pending results of analytical tests of the substance, the determination of its predominant characteristics shall be made by investigating the source of the discharge, its physical properties, and its behavior in the environment. The GLO will notify the state natural resource trustees of the actual or threatened unauthorized discharge.

(b) In response to any actual or threatened unauthorized discharge, the commissioner may designate a state on-scene coordinator to act on the commissioner's behalf at the site of the actual or threatened discharge.

(1) It is the duty of the state on-scene coordinator, in cooperation with the federal on-scene coordinator to assess in detail all aspects of the actual or threatened unauthorized discharge, evaluate and direct the responsible person's response activities, initiate and direct other response activities, carry out orders of the commissioner, and report at regular intervals to the commissioner. The state on-scene coordinator has an ongoing duty to evaluate, assess, and direct all response activities in order to insure compliance with applicable contingency plans, discharge response plans, and to ensure public health and safety, and to minimize to the greatest extent possible property damage and damages to natural resources.

(2) In the event a discharge appears to be from a facility for the exploration, development, or production of oil or gas or from an oil or gas pipeline, a Railroad Commission designee shall act as the state on-scene coordinator for spills of 240 barrels or less. When the spill exceeds 240 barrels, it is the responsibility of GLO to provide the state on-scene coordinator.

(c) The GLO will coordinate its response with the federal on-scene coordinator and will contact other state agencies who have jurisdiction over the unauthorized discharge.

(d) Based on the assessment of the state on-scene coordinator, GLO will determine whether and where to establish an on-scene command post. The state on-scene command post will serve as the single point of communication and coordination for state oversight and coordination of response actions. The post will be staffed until response operations are declared complete.

§19.34. Duties of Responsible Person.

(a) In the event of an actual or threatened unauthorized discharge, it is immediately the duty of the responsible person to initiate response action, or to ensure that the person in charge will initiate response action. The responsible person or the person in charge must inform the General Land Office (GLO) of the person's strategy for responding to the unauthorized discharge, including whether the facility's or vessel's discharge prevention and response plan will be adequate for abating, containing, and removing pollution or whether it appears that an adequate response to the discharge will require deviation from the plan. The response strategy and proposed deviations from the plan must be reported to the on-scene coordinator on a regular basis throughout response operations.

(b) The GLO may determine that

the responsible person is unknown or appears unwilling or unable to respond adequately to the discharge, including reasonably foreseeable worst case scenarios of the discharge. The commissioner may delegate this determination to the state on-scene coordinator. In the event of such a determination the state on-scene coordinator may order the responsible person to take certain response actions. The state on-scene coordinator may also initiate response action by the state, either in addition to or in lieu of further response actions by the responsible person. As soon as possible after a determination of inadequate response, the state on-scene coordinator will notify the responsible person or the person acting for the responsible person of the inadequacy of response and inform the person of the intended corrective action. A determination that a responsible person appears unwilling or unable to respond adequately will be made by evaluating the resources committed to the response, the degree of cooperation with directions of the on-scene coordinator, the ability to commit further resources, and adherence to response and contingency plans.

(c) The responsible person or anyone acting on behalf of the responsible person must notify the state on-scene coordinator if the person intends not to comply with, or has not complied with, state response orders or actions. The GLO may determine the person has unreasonably failed to comply with state response actions if noncompliance is for any reason other than an objective and reasonable belief that compliance unavoidably conflicts with federal requirements or poses an unjustifiable risk to public safety or natural resources. Any failure to comply may be grounds for a determination of inadequate response under subsection (b) of this section.

(d) The responsible person must orally state the reasons for noncompliance with an order of the state on-scene coordinator and must give written justification for the refusal within 48 hours as required by the Oil Spill Prevention and Response Act of 1991, §40.106.

§19.35. Assistance.

(a) Other than persons employed by the responsible person or certified discharge cleanup organizations under contract with the responsible person, or any person conducting initial emergency response assistance, no person shall conduct cleanup operations without the approval of the on-scene coordinator. Authorization may be given individually or blanket authorization may be given to any group or class of persons or organizations. The General Land Office (GLO) will give preference to those persons who are certified as discharge cleanup organizations and to trained and qualified personnel.

(b) Any person or discharge cleanup organization participating in response operations shall not receive or be eligible to receive compensation from the fund unless the participation was authorized by GLO. A person or organization is entitled to a qualified immunity from liability for damages, response costs, or penalties only if acting pursuant to request of the on-scene coordinator, the responsible person, or in accord with the applicable contingency plan or response plan.

(c) The GLO may waive the prior authorization requirement only if the assistance rendered was consistent with applicable contingency plans, and response plans, and was effective, cost-efficient, reasonably necessary, and did not endanger life, property, or natural resources.

§19.36. Disposal.

(a) Waste from unauthorized discharges must be disposed of only at sites that have all necessary permits to accept the type of waste discharged. Each responsible person or discharge cleanup organization removing waste shall inform the on-scene coordinator in writing of the name and location of the site where the waste will be disposed.

(b) All responsible persons and discharge cleanup organizations engaged in spill response operations shall minimize the generation of waste by utilizing techniques such as reusing sorbent pads, recycling recovered oil, recovering boom, and best available technologies.

(c) The responsible person must remove all waste generated from an unauthorized discharge of oil from the temporary staging area within 14 days of the completion of all response operations.

§19.37. Completion of Response.

(a) The General Land Office (GLO) will consider the opinions of the designated natural resource trustees in determining whether response actions are complete.

(b) In addition to reporting an unauthorized discharge at the time it occurs, the responsible person must file a written report of any such discharge with GLO within 30 days of the response actions being declared complete. The report must contain details of the information listed in §19.32(d)(2) of this title (relating to Reporting an Unauthorized Discharge) and must state the known extent of the damages to and loss of real and personal property. The report must also contain a listing of known damages to natural resources. Reporting forms are available from GLO.

§19.38. Remediation.

(a) The designated natural resource trustees for the State of Texas are the General Land Office (GLO), the Texas Water Commission, and the Parks and Wildlife Department. If GLO determines, in conjunction with the designated natural resource trustees, that an unauthorized discharge has damaged natural resources, the trustees may require the responsible person or persons to remediate the damage. If the natural resources trustees require remediation, the trustees will notify the responsible person in writing that a remediation plan must be submitted. Within a reasonable time determined by the natural resources trustees, the responsible person must submit a remediation plan to the natural resources trustees for review and approval.

(b) The remediation plan must include the following:

(1) a map showing the area affected by the unauthorized discharge and a survey of the natural resources damaged by the discharge;

(2) a plan showing locations, times, and methods for sampling, testing, and monitoring to determine the extent of contamination and natural resources injury and loss;

(3) a schedule of remediation activities and increments of time within which remediation goals are to be achieved;

(4) a description of performance measures to evaluate the effectiveness of remediation; and

(5) any other matter reasonably required by the trustees.

(c) The responsible person must carry out remediation of natural resource damages pursuant to the remediation plan approved by the trustees.

(d) Remediation includes, but is not limited to, restoration, rehabilitation, and replacement of damaged natural resources. It also includes mitigation activities to prevent further or future damage or further diminution in the value of the affected resource.

(e) The GLO, in conjunction with the other natural resource trustees of the state, may enter into negotiations with the responsible persons for remediation agreements.

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201537

Garry Mauro
Commissioner
General Land Office

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For further information, please call: (512) 463-5394

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Subchapter D. Compensation and Liability

• 31 TAC §§19.51-19.54

The new sections are adopted under the Natural Resources Code, §40.007, which authorizes the commissioner to promulgate rules necessary and convenient to the administration of OSPRA.

§19.52. Designation of Responsible Person; Advertising Claims.

(a) The General Land Office (GLO) will conduct a preliminary investigation of the discharge. If GLO determines that the unauthorized discharge has caused any damages compensable under the Oil Spill Prevention and Response Act of 1991 (OSPRA), GLO will identify the person or persons who appear responsible for the discharge.

(1) Upon a determination that damages compensable under OSPRA have resulted from an actual unauthorized discharge of oil or are likely to result from a threatened discharge, GLO will immediately designate the responsible person. GLO will make this determination based on the actual conditions observed at the site of the discharge or threatened discharge and will consider the following factors:

(A) the quantity of oil discharged or potentially dischargeable;

(B) the location and probable path of the discharge;

(C) the proximity to real or personal property owned by a person other than the responsible party;

(D) the natural resources likely to be affected;

(E) any other circumstance or factor relevant to an assessment of the impact of the actual or threatened discharge.

(2) The GLO shall give notice to the responsible person immediately upon a determination that damages have resulted or will result from the discharge. The notice will be in writing and may also be conveyed orally. The designation may be challenged within five days of the written notice. One or more persons or entities may be designated as persons responsible. The designation will be made by reviewing and assessing the following factors:

(A) the owner, operator, or charterer of the vessel or facility from which the discharge emanates;

(B) the person responsible for the discharge;

(C) the apparent cause of the discharge;

(D) whether or not any defense to liability is obviously applicable to the discharge;

(E) any other relevant factor which comes to the attention of GLO.

(b) Failure to challenge a proposed designation is not an admission of liability for the unauthorized discharge.

(c) A challenge to the proposed designation must be made within five days in writing, fully state the grounds for the challenge, and be filed with GLO. If the proposed designation is challenged or GLO is unable to make a designation for any other reason, GLO shall advertise the manner in which claims for response costs and damages must be filed.

(d) If the proposed designation is not challenged within five days, the designated responsible person must inform GLO of its intended advertising, claims, and payment procedures, including the name of any agent handling claims on the responsible person's behalf and the name of any underwriter for liability from the discharge. As a part of all claims procedures, the designated responsible person must inform all claimants of the availability of the state fund and the federal fund to pay claims.

(e) Claims advertisements by GLO or designated responsible persons must be printed each day for one week, beginning no later than 14 days after completion of the designation process, in the newspaper of largest general circulation in the locality in which the unauthorized discharge occurred. The locality means the county and contiguous counties where real or personal property affected by the discharge is located. Advertisements must also be placed in designated newspapers of general circulation anywhere in the State of Texas when the commissioner so orders due to the impact of the discharge on natural resources and on persons economically reliant on the use of acquisition of the natural resources. Advertising requirements may also include radio and television announcements of claims procedures.

§19.53. Claims Procedures.

(a) The Oil Spill Prevention and Response Act of 1991 established the fund to provide immediately available compensation for response costs incurred and damages suffered as a result of an unauthorized discharge. The intent of this section is to avoid economic displacement and to simplify resolution of liability issues by creating procedures conducive to settlement and adjustment of claims in as orderly, efficient, and timely a manner as possible. "Reasonably responded" for the purposes of this section means that the receipt of the claim has been acknowledged, that claimant has been advised of the need for any further documentation to complete claims processing, and that the claimant has been advised in writing whether or not the responsible person will make an offer of settlement on any part or all of the claim and the date by which such offer will be made.

(b) If there is a designated responsible person, all claims must be presented to the designated responsible person first.

(1) If the claim is for $50,000 or less and is not reasonably responded to within 30 days of presentation to the designated responsible person, the claimant may present the claim to the General Land Office (GLO).

(2) If the claim is for over $50,000 and is not reasonably responded to within 90 days of presentation to the designated responsible person, the claimant must present the claim to the federal fund prior to the presentation to GLO. If a claim presented to the federal fund is not settled within 60 days of presentation, the claimant may then present it to GLO.

(c) If there is no designated responsible person, either because the identity of the person responsible for the unauthorized discharge is unknown or a proposed designation is challenged, claims of $50,000 or less may be presented to GLO first. Claims over $50,000 must be presented to the federal fund first. Any such claim not reasonably responded to within 60 days may then be presented to GLO.

(d) A claim is presented when GLO actually receives it. Claimants must present claims to GLO within 180 days from the date the claim is first eligible to be filed with GLO. When necessary to meet this deadline, the claimant may present the claim even though it is under consideration by the responsible person or the federal fund. The GLO may toll the 180-day period if the claimant cannot present it within that time for reasons beyond the claimant's control.

(e) Claims must be in writing, must be signed and verified by the claimant or the claimant's agent or legal representative,

and must include the following information:

(1) whether it is for damages or response costs or both;

(2) the cause, nature, and dollar amount of the claim;

(3) whether the claim is covered by insurance or other benefits for which the claimant is eligible;

(4) the amount and nature of any compensation or earnings the claimant received as a consequence of the unauthorized discharge; and

(5) an oath or affirmation that the same claim is not being pursued through any other claim, suit, settlement, or proceeding.

(f) The GLO may prescribe appropriate claim forms. Claimants must present claims to GLO accompanied by evidence supporting the claim and proof that all prerequisites to filing a claim with GLO have been satisfied, including a copy or summary of any offer of settlement or payment by the responsible person or the federal fund. Claimant must provide GLO with a copy of the claim previously submitted to the designated responsible person. The GLO may require additional information or evidence to support a claim.

(g) The GLO shall review the evidence and any settlement offer and may require or consider additional evidence or proof from the claimant or from the designated responsible person.

(h) The GLO may, in its discretion, treat separately each class of damages or costs set out in a claim. The GLO may make partial awards of damages or costs set out in the claim based on separate classes of damages or costs or for other good cause.

(i) If GLO determines that the settlement offer was reasonable, and the claimant did not make reasonable settle, or that the evidence submitted is insufficient to support the claim, GLO will deny the claim. The GLO will inform the claimant and the designated responsible person of denial in writing. After denial, if a claimant attempts reasonable efforts to settle and the person responsible or the federal fund does not tender a reasonable settlement offer, GLO may allow the claim to be reinstated.

(j) If GLO determines a settlement offer is not reasonable, or if a settlement offer is not a prerequisite to the claim, GLO will propose an award amount. The GLO will notify the claimant and the responsible person of the proposal in writing.

(k) The GLO will hold a hearing on the proposed award if either the claimant or the designated responsible person files a written request for a hearing within 20 days of issuance of the proposal.

(l) If no hearing is requested within 20 days, or after the hearing if one is requested, GLO will either notify the claimant and the designated responsible person of denial or tender the award to the claimant and notify the designated responsible person of the award amount. The claimant may reject the tender by returning it to GLO within 10 days of receipt.

(m) Acceptance of an award is final settlement as to the claimant and constitutes a full release as to the claimant. If the tender is refused or not accepted within 10 days, the claimant is ineligible for compensation from the fund for the claim.

(n) Compensation may be claimed and awarded for costs necessarily incurred for claims preparation and presentation.

(o) The GLO will not consider any claim filed by a claimant who is pursuing substantially the same claim through litigation.

§19.54. Natural Resource Damages. To determine natural resource damages for purposes of an action under the Oil Spill Prevention and Response Act of 1991, the General Land Office (GLO) may use the natural resource damages assessment methods adopted by the U.S. Department of Interior under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 United States Code, §§1321 et seq), or by the U.S. Department of Commerce under the Oil Pollution Act of 1990, Public Law 101-380. The GLO may also use the guidelines on fish and wildlife values established by the Parks and Wildlife Department for civil liability for violations of the Parks and Wildlife Code. These guidelines are found at §§69.20, et seq of this title (relating to Fish and Wildlife Values). The GLO may use any other methods of assessment that it deems reasonable given the particular resources affected.

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201538 Garry Mauro
Commissioner
General Land Office

Effective date: February 21, 1992

Proposal publication date: August 9, 1991

For further information, please call: (512) 463-5394

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Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Subchapter E. Depredating Animal Control and Wildlife Management from Aircraft

- **31 TAC §§55.142, 55.143, 55.145, 55.151, 55.152**

Texas Parks and Wildlife Commission adopts amendments to §§55.142, 55.143, 55.145, 55.151, and 55.152, concerning law enforcement, without changes to the proposed text as published in the December 17, 1991, issue of the *Texas Register* (16 TexReg 7313).

The adopted section will allow the department to regulate exotic depredating animals that may be hunted by use of aircraft.

The adopted section will function to permit the department to regulate the number and type of exotic animal as authorized by statute.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Parks and Wildlife Code, Chapter 43, Subchapter G, as amended by Senate Bill 1217, 72nd Legislature, that added exotic animal to the list of depredating animals that may be controlled by use of aircraft.

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

Issued in Austin, Texas, on February 3, 1992.

TRD-9201592 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date: February 24, 1992

Proposal publication date: December 17, 1991

For further information, please call: (512) 389-4845

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Subchapter H. Special Game Warden Program

- **31 TAC §§55.401, 55.403, 55.405, 55.407, 55.409, 55.411**

The Texas Parks and Wildife Department adopts new §§55.401, 55.403, 55. 405, 55.407, 55.409, and 55.411, concerning law enforcement, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7442).

New legislation requires the commission to establish a new Law Enforcement Commission for honorably retired game wardens.

The adopted section will function to permit the department to provide additional law enforcement personnel for special assignments, as needed.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Parks and Wildlife Code, Chapter 55,

Subchapter E, as amended by House Bill 1578, 72nd Legislature, which provides the Texas Parks and Wildlife Commission with the authority to set rules to determine compensation for the services of a special game warden.

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

Issued in Austin, Texas, on February 3, 1992.

TRD-9201567 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date: February 24, 1992

Proposal publication date: December 20, 1991

For further information, please call: (512) 389-4845

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Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.1

The Texas Air Control Board (TACB) adopts an amendment to §101.1, concerning definitions, with changes proposed text as published in the August 2, 1991, issue of the *Texas Register* (16 TexReg 4207). The amendment modifies the definition of "incinerator" to include any combustion device which burns more than 10% of solid waste on a total Btu heat input averaged over a one-hour period or more than 1.0% of solid waste on an annual basis. A definition of "solid waste" is added in order to obtain consistent enforcement of existing rules applicable to facilities which incinerate various types of solid waste. The existing definition of "industrial solid waste" is revised to delete the reference to hazardous waste and make the definition consistent with that of the Texas Water Commission (TWC).

A public hearing was held in Austin on August 27, 1991. Testimony was received from eight commenters during the comment period which ended August 29, 1991. Opposing the proposal were City Public Service of San Antonio (CPS); Texas Chemical Council (TCC): Dupont Gulf Coast Regional Manufacturing Services (Dupont); Southwestern Public Service Company (SPS): Sterling Chemicals (Sterling); Dow Chemical (Dow); Houston Lighting and Power (HLP); Texaco, Incorporated (Texaco); and an individual. None of the commenters supported the proposal, and the United States Environmental Protection Agency had no comment. The following discussion initially addresses the more general comments and then, addresses the comments which deal with specific parts of the regulation.

The stated objectives of these rule revisions were a cause of concern to an individual who felt that the proposed definition of incinerator and the exclusion of hazardous waste incinerators from the coverage of these revisions would allow operators of hazardous waste incinerators to easily escape regulation. The same individual also felt that consistency between TACB regu- lations and those of TWC would not adequately protect public health since TWC does not have an equivalent level of expertise in matters relating to incineration.

Existing hazardous waste incinerators are subject to §111.124, concerning burning hazardous waste fuels in commercial combustion facilities, and federal boiler and industrial furnace rules. New hazardous waste incinerators must also meet stringent permitting requirements of TACB and/or TWC. Consequently, there appears to be adequate regulatory coverage in this important area. Consistent definitions between TACB and TWC are vital in eliminating potential confusion and misunderstandings between the public, regulators, and regulated industry.

The proposed clarification of the definition of incinerator to include any combustion device which burns more than 5.0% of solid waste on a total Btu basis generated many comments. CPS, TCC, Dupont, Sterling, and Dow all commented that the reason behind the proposal is not clear and that this definition will include units such as utility boilers. They pointed out that there is a difference in design between devices which burn for waste reduction and those that burn for energy recovery. CPS, TCC, Dupont, and SPS stated that there is no basis in other statutes or scientific studies that the 5.0% threshold is protective of human health or the environment.

The staff has reviewed operating permits, existing TACB and federal regulations, and scientific literature and agreed that the burning of solid waste at an hourly heat input rate 10% does not pose a significant threat to human health or the environment and is a good method of waste disposal. The definition of "incinerator" has been changed to include only those combustion devices which burn more than 10% of solid waste. The practice of burning waste oil, as is the case with the commenters, is regulated under 40 Code of Federal Regulations, Part 266.40-44 and is a common and safe practice among boiler operators. CPS, SPS, and HLP commented that the burning of waste oils in utility boilers is safer than other methods of disposal and this is particularly true with regard to oil contaminated with polychlorinated biphenyls (PCB). All three utilities would like to continue their practice of burning PCB contaminated oils and other waste oils in their high efficiency boilers on a 10% by volume basis. They also pointed out the savings in fuel and alternate disposal costs which are passed on to consumers. SPS continued their comments and stated that they have documented reduced nitrogen oxides (NO_x) emissions at gas fired plants and reduced sulfur dioxide (SO_2) emissions at coal fired plants as a result of burning waste oils.

High efficiency boilers are charactenzed by a combustion efficiency in excess of 99.9% and utility boilers are in this category. Procedures are established in 40 Code of Federal Regulations, Part 761.60 for the burning of PCB contaminated oils in high efficiency boilers on a 10% by volume basis. The TACB staff has reviewed the research cited in the testimony of CPSSA (Hunt, Gary et.al., *Environmental Science Technology*, 1984, 18, 171-179) which shows a PCB destruction rate in utility boilers in excess of 99.9997% and validates the federal procedures. The staff has concluded that the burning of PCB contaminated and other waste oils on a 10% heat input basis does not pose a threat to human health or the environment and agreed that burning is a more attractive alternative than disposal at a landfill. Additionally, by burning the oil in the utility boiler instead of a commercial incinerator, the heat value of the oil is recovered and the disposal savings passed to consumers. The definition of "incinerator" has been changed so that boilers burning PCB contaminated oils in accordance with 40 Code of Federal Regulations, Part 761.60 will not be subject to TACB incinerator rules. Reductions in NO_x and SO_2 emissions are dependent on several factors, including the sulfur content of fuels and the operating temperature of the boiler. Operating at a 10% feed rate of waste oil would not necessarily decrease the amount of these pollutants, but neither does it cause an increase.

HLP stated that monitoring an hourly injection rate of waste oil would require the installation of separate storage tanks, pumps, and monitoring equipment on their units burning non-PCB contaminated oils. The commenter proposed that an alternate criterion for defining an incinerator should be added that would allow a 1.0% heat input of waste averaged annually.

This request for a revised definition is reasonable and an alternative has been added to the incinerator definition. Procedures for burning non-PCB waste oil are established in 40 Code of Federal Regulations, Part 266.40-44, and HLP complies with these requirements. HLP and other utilities burn PCB contaminated oil in units equipped with hourly flow meters as required by 40 Code of Federal Regulations, Part 76.60. Federal regulations do not specify a feed rate for waste oil, unless contaminated with PCB.

Dupont, Sterling, Dow, TCC, and Texaco requested that a definition of "hazardous waste" be added to §101.1 since this term is used in §111.121. A new definition can not be added without consideration through public hearings. This issue will be reviewed by the staff for possible inclusion in future rule-making.

The amendment is adopted under the Texas Clean Air Act §382.017, (TCAA), Texas Health and Safety Code Annotated (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§101.1. Definitions. Unless specifically defined in the Texas Clean Air Act (the Act) or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Act, the following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Incinerator–An enclosed combustion

apparatus and appur- tenances thereto which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total Btu heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total British thermal unit heat input basis averaged annually shall also be considered an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director.

Industrial solid waste–Solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

Solid waste–Garbage; rubbish; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control equipment; and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.

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

Issued in Austin, Texas, on January 27, 1992.

TRD-9201363 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: February 19, 1992

Proposal publication date: September 2, 1991

For further information, please call: (512) 908-1451

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Chapter 111. Control of Air Pollution From Visible Emissions and Particulate Matter

Incineration

• 31 TAC §111.121, §111.127

The Texas Air Control Board (TACB) adopts amendments to §111.121 and §111.127, with changes to the proposed text as published in the August 2, 1991, issue of the *Texas Register* (16 TexReg 4207). The amendment to §111. 121, concerning single-, dual-, and multiple-chamber incinerators, stipulate that the requirements of the section do not apply to hazardous waste incinerators and that incinerators may operate at oxygen concentrations less than 4.0% by volume provided they meet emissions limits for carbon monoxide and/or total hydrocarbons. The amendment to §111.127, concerning monitoring and recordkeeping requirements, stipulates that compliance with carbon monoxide and hydrocarbon emissions may be demonstrated using a rolling hourly average.

A public hearing was held in Austin on August 27, 1991. Testimony was received from seven commenters during the comment period which ended August 29, 1991. Southwestern Public Service (SPS) and Houston Lighting and Power (HL&P) supported the proposal and four commenters opposed it. Opposing the proposal were Texaco, Incorporated (Texaco), Dupont Gulf Coast Regional Manufacturing Services (Dupont), Sterling Chemicals (Sterling), and Texas Chemical Council (TCC). The United States Environmental Protection Agency (EPA) neither supported nor opposed the proposal. The following discussion initially addresses the more general comments and then, addresses the comments which deal with specific parts of the two sections.

One of the stated objectives of the proposed revisions was to achieve consistency with similar rules of the Texas Water Commission (TWC). This objective was a cause of concern to an individual who felt that consistency between TACB regulations and those of TWC would not adequately protect public health since TWC does not have an equivalent level of expertise in matters relating to incineration. The same individual also felt the exclusion of hazardous waste incinerators from the coverage of these revisions would allow operators of hazardous waste incinerators to easily escape regulation.

Consistent definitions between TACB and TWC are vital in eliminating potential confusion and misunderstandings among regulatory agencies, the regulated community, and the public. Existing hazardous waste incinerators are subject to §111.124, concerning burning hazardous waste fuels in commercial combustion facilities and to federal boiler and industrial furnace rules (40 Code of Federal Regulation 266, Subpart H). New hazardous waste incinerators just also meet stringent permitting requirements of TACB and/or TWC. Consequently, there appears to be adequate regulatory coverage in this important area.

Texaco suggested that the new sentence added to the opening paragraph of §111.121 be changed to state that: "The requirements of this section do not apply to incinerators which burn hazardous waste." The proposed sentence stated that: "The requirements of this section do not apply to hazardous waste incinerators." The term "hazardous waste incinerator" refers to operations conducted under a specific set of regulations and is being retained in the new sentence to eliminate any confusion. In addition the commenter's suggested language could allow an excessive number of incinerators to claim exemption from this section.

Dupont, Sterling, and TCC commented that facilities newly affected by the proposed expansion of the definition of incinerator will need 12 months to retrofit, calibrate equipment, and achieve compliance. The two commenters requested an extension of the compliance date of December 31, 1991, as specified in §111.121(6), to December 31, 1992. Since the installation and adjustment of control equipment can require many months. The request for an extension appears reasonable. The expansion of the definition of incinerator will be accomplished through concurrent rulemaking in §101.1 of this title, concerning definitions.

With regard to §111.127, the City of Quitman commented that the installation of continuous emission monitors is prohibitively expensive for operators of small incinerators and requested the development of alternate standards for small, municipal incinerators.

Given the small volume of waste burned in the Quitman and similar units, the development of alternate standards appears a reasonable action. A sentence has been added to the subsection to give operators of municipal incinerators constructed prior to 1990 which burn less than 2,000 pounds per hour of municipal solid waste, the option of installing monitors or performing a carbon monoxide stack test to establish oxygen and temperature operating parameters. Continued monitoring of these parameters is sufficient to maintain adequate combustion efficiency needed to minimize levels of air contaminants.

SPS and HL&P supported the changes to §111.121 and §111.127 and EPA had no comment.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code, Annotated (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§111.121. Bingle-, Dual-, and Multiple-Chamber Incinerator. No person shall cause, suffer, allow, or permit the burning of domestic, municipal, commercial, or industrial solid waste as defined in §101.1 of this title (relating to Definitions) in a single-, dual-, or multiple-chamber incinerator, unless the conditions listed in paragraphs (1)-(7) of this section are met. For purposes of this section, the term "commercial waste" shall be defined as waste material generated from retail and wholesale establishments. The requirements of this section do not apply to hazardous waste incinerators.

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

(4) Oxygen content shall be maintained at greater than 4.0% by volume of the emissions of the incinerator, measured at the exit of the incinerator, or at an alternate location approved by the executive director or a designated representative of TACB. Incinerators subject to the requirements of this section may operate at oxygen concentrations less than 4.0% by volume if compliance with paragraph (3) of this section can be continuously demonstrated at a lower oxygen concentration.

(5) (No change.)

(6) Compliance with the requirements of this section shall be as soon as practicable, but no later than July 31, 1990, except in the case of industrial solid waste incinerators, which shall be in compliance as soon as practicable, but no later than December 31, 1992.

(7) Incinerators burning not more than 100 pounds per hour of domestic, municipal, commercial, or industrial solid waste, based on the total weight of materials burned, shall be subject to an opacity limit of 5.0% averaged over a six-minute period and the requirements of §111.127(d) of this title (relating to Monitoring and Recordkeeping Requirements), but shall be otherwise exempt from the provisions of §§111.121, 111.123, 111.125, 111.127, and 111.129 of this title (relating to Incineration).

§111.127. Monitoring an Recordkeeping Requirements.

(a) Incinerators burning not more than 100 pounds per hour of medical waste as specified in §111.123 of this title (relating to Medical Waste Incinerators) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the temperature of the exhaust gas of the incinerator. All incinerators burning more than 100 pounds per hour of waste as specified in §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators) and §111.123 shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the oxygen content and temperature of the exhaust gas of the incinerator. The monitoring device for incinerators equipped with a wet scrubbing device shall continuously measure and record the pressure drop of the gas flow through the wet scrubbing device. Commercial medical waste incinerators and incinerators burning more than 225 pounds per hour of domestic, municipal, commercial, medical, or industrial solid waste shall be equipped with continuous emissions monitors which measure and record in-stack carbon monoxide in addition to the other requirements of this section. For nonmedical incinerators, a total hydrocarbon monitor may be substituted for the carbon monoxide monitor if a total hydrocarbon standard is established pursuant to §111.121(3). For municipal incinerators built prior to 1990 and burning less than 2,000 pounds per hour of municipal solid waste, a stack test for carbon monoxide may be performed to establish oxygen and temperature requirements necessary to maintain minimum carbon monoxide emissions, and monitoring of these parameters may be substituted for the carbon monoxide monitoring device. The oxygen, total hydrocarbon, and carbon monoxide monitoring devices described in this section must be certified for use following procedures outlined in 40 Code of Federal Regulations 60, Appendix B, Performance Specifications 3 and 4, respectively. Such certification must be approved by the executive director or a designated representative of the Texas Air Control Board (TACB). Compliance determinations may be made based on results of monitoring with a certified monitor. Compliance with the carbon monoxide and/or total hydrocarbon requirements specified in §111.121(3), §111.123(3)(D), and §111.124(4) of this title (relating to Burning Hazardous Waste Fuels in Commercial Combustion Facilities) may be demonstrated using a rolling hourly average. The rolling hourly average shall be defined as the arithmetic mean of the 60 most recent one-minute concentrations measured by the continuous monitoring system.

(b)-(d) (No change.)

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

Issued in Austin, Texas, on January 21, 1992.

TRD-9201362 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: February 19, 1992

Proposal publication date: September 2, 1991

For further information, please call: (512) 908-1451

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.299

The Comptroller of Public Accounts adopts an amendment to §3.299, concerning newspapers, magazines, publishers, exempt writings, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7454).

The amendment is the result of a change in the Tax Code, Chapter 151 made by the 72nd Legislature, 1991. The amendment expands the definition of newspaper to include newspapers furnished without charge. Another amendment, unrelated to legislative action, defines the term "other short intervals." The expansion of the definition of newspapers to include free newspapers is effective September 1, 1991.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201506 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 21, 1992

Proposal publication date: December 20, 1991

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

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Subchapter S. Interstate Motor Carrier Sales and Use Tax

• 34 TAC §3.445

The Comptroller of Public Accounts adopts an amendment to §3.445, concerning computation of proportioned tax on trailers and semitrailers, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7454).

The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991 First Called Session. The tax rate used in the computation was increased.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201502 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 21, 1992

Proposal publication date: December 20, 1991

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

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• **34 TAC §3.447**

The Comptroller of Public Accounts adopts an amendment to §3.447, concerning owner-operator contracts, without changes to the December 20, 1991, issue of the *Texas Register* (16 TexReg 7455).

The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991, First Called Session. An exclusion was added due to the change in the proportioned tax rate.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201503 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 21, 1992

Proposal publication date: December 20, 1991

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

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Subchapter S. Interstate Motor Carrier Sales and Use Tax

• **34 TAC §3.448**

The Comptroller of Public Accounts adopts an amendment to §3.448, concerning trip-lease agreements, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7455).

The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991, First Called Session. The exclusion is changed due to the tax rate increase.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201504 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 21, 1992

Proposal publication date: December 20, 1991

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

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Subchapter U. Public Utility Gross Receipts Tax

• **34 TAC §3.511**

The Comptroller of Public Accounts adopts an amendment to §3.511, concerning due date for assessment, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7456).

The amendment reflects legislative changes required by House Bill 11, 72nd Legislature, 1991, First Called Session, increasing the interest rate from 10% to 12%. Subsection (d) is omitted as it is no longer valid.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201505 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 21, 1992

Proposal publication date: December 20, 1991

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

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Subchapter Y. Controlled Substances Tax

• **34 TAC §3.681**

The Comptroller of Public Accounts adopts an amendment to §3.681, concerning imposition and rate of tax, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7638).

The amendment was proposed to conform with changes made to the Controlled Substances Tax by the 72nd Legislature, 1991. It creates a new category of taxable substances not sold by weight and provides a definition for that term. The changes are effective September 1, 1991.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 31, 1992.

TRD-9201447 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 20, 1992

Proposal publication date: December 24, 1991

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

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• **34 TAC §3.682**

The Comptroller of Public Accounts adopts an amendment to §3.682, concerning tax payment certificates, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7638).

The amendment was proposed to conform with changes made to the Controlled Substances Tax by the 72nd Legislature, 1991, to be effective September 1, 1991. The amendment provides for the creation of a new tax payment certificate for taxable substances not sold by weight.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on January 30, 1992.

TRD-9201448 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: February 20, 1992

Proposal publication date: December 24, 1991

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

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to 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 named 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. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register.*

Texas Department on Aging

Thursday, February 13, 1992, 9:30 a.m. The Texas Board on Aging of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Conference Room, Austin. According to the agenda summary, the board will consider and possibly act on: approval of the January 16, 1992, minutes; committee recommendations on policy statement on visibility, public service announcements, TDoA's mission statement, philosophy statement, environmental assessment, goals for the strategic plan, and employee reclassifications; budget performance and projections; Title III funding; staff's recommendations on revised operating budget; Financial and Compliance Audit report; recommendations on revised operating budget; Harris County AAA's area plan amendment; revised options for independent living program memorandum of agreement with Texas Department of Human Services on nonduplication of services; internal auditor' report; meet in executive session to discuss Civil Action Case Number B-92-007 (Simon Hernandez, et al versus Ann Richards and Texas Department on Aging, et al); and appointments/reappointments of Citizens Advisory Council members.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: January 31, 1992, 2:47 p.m.

TRD-9201533

Monday, February 24, 1992, 10 a.m. The Texas Board on Aging's Minority Elderly Task Force of the Texas Department on Aging will meet at the Senior Citizens of Greater Dallas, 2905 Swiss Avenue, Dallas. According to the complete agenda, the task force will call the meeting to order; discuss approval of the minutes of the January 13, 1992 meeting; discussion of proposed minority elderly conference; site visit to proposed hotels for conference; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: January 31, 1992, 2:47 p.m.

TRD-9201534

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State Aircraft Pooling Board

Wednesday, February 26, 1992, 3:30 p.m. The State Aircraft Pooling Board will meet at 4900 Old Manor Road, Austin. According to the complete agenda, the board will call the meeting to order; make introductions; discuss approval of minutes of board meeting, October 2, 1991; TSTC briefing; EEO policy; Strategic Plan, House Bill 2009; executive director's report; setting of time and place for next meeting; and adjourn.

Contact: Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: January 31, 1992, 9:51 a.m.

TRD-9201500

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Texas Animal Health Commission

Thursday, February 13, 1992, 11 a.m. The Committee to Supervise Duties of Internal Auditor of the Texas Animal Health Commission will meet at 210 Barton Springs Road, First Floor Conference Room, Austin. According to the complete agenda, the committee will discuss reports and recommendations of the Internal Auditor concerning the TAHC compliance section; certified free herd section; discuss performance of evaluation process; and internal audit charter.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78711, (512) 479-6697.

Filed: February 3, 1992, 10:36 a.m.

TRD-9201593

Thursday-Friday, February 13-14, 1992, 1:30 p.m. and 8:30 a.m. respectively. The Texas Animal Health Commission will meet at 210 Barton Springs Road, First Floor Conference Room, Austin. According to the complete agenda, the commission will have orientation for members of the Texas Animal Health Commission.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78711, (512) 479-6697.

Filed: February 3, 1992, 10:36 a.m.

TRD-9201594

Friday, February 14, 1992, 11 a.m. The Texas Animal Health Commission will meet at 210 Barton Springs Road, First Floor Conference Room, Austin. According to the agenda summary, the commission will discuss approval of the minutes of previous meeting and actions of the executive director; post hearing review and final decision of commission; report of the committee that supervises the duties of the Internal Auditor; consideration for adopting amendments to regulations-Brucellosis, interstate, general practice and procedures; and discuss staff recommendations to allow waiver or exception for adult vaccinated cattle entering Texas.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78711, (512) 479-6697.

Filed: February 3, 1992, 10:37 a.m.

TRD-9201595

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Texas Bond Review Board

Tuesday, February 11, 1992, 10 a.m. The Staff of the Texas Bond Review Board will meet at the Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of minutes; discussion of proposed issues; discuss other business; and adjourn.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: February 3, 1992, 4:45 p.m.

TRD-9201678

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Texas Department of Criminal Justice, Board of Pardons and Paroles

Tuesday, February 11, 1992, 9:30 a.m. The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at 8610 Shoal Creek Boulevard, Austin. According to the complete agenda, the board will discuss and act on the following items: approve minutes for meeting of December 3, 1992; parole division staff report to the board; update rules/procedures; report on SCR 26 Project; adoption of criteria for special needs program; board workshop agenda, meeting time, and place; administrative review procedures; and caseload management and related matters.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2744.

Filed: February 3, 1992, 4:24 p.m.

TRD-9201676

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Texas School For The Deaf

Friday, February 7, 1992, 10 a.m. The Governing Board Policy Committee for the Texas School For The Deaf will meet at 1102 South Congress Avenue, Temporary Building Three Conference Room, Austin. According to the agenda summary, the committee will discuss policy review; policy amendments; and policy adoption.

Contact: S. Custer, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: January 30, 1992, 11:18 a.m.

TRD-9201437

Friday, February 7, 1992, 1 p.m. The Governing Board of the Texas School For The Deaf will meet at 601 Airport Boulevard, Building 602, Large Conference Room, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of the minutes of December 7, 1991; business for information purposes; business requiring board action; meet in executive session; comments by board members; and adjourn.

Contact: S. Custer, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: January 30, 1992, 11:17 a.m.

TRD-9201436

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East Texas State University

Wednesday, February 12, 1992, 9 a.m. The Board of Regents Executive Committee of East Texas State University will hold a meeting by telephone conference call at East Texas State University, McDowell Administration Building, Commerce. According to the complete agenda, the committee will review and discuss reappointment of president and chief executive officer.

Contact: Charles Turner, East Texas State University, E. T. Station, Commerce, Texas 75429, (903) 886-5539.

Filed: January 30, 1992, 12:08 p.m.

TRD-9201439

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Texas Education Agency

Tuesday, February 11, 1992, 8:30 a.m. The State Board of Education Task Force on Professional Preparation and Development of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the task force will make introductory remarks; discuss approval of the minutes of January 30, 1992 meeting; focus on the charge to identify policy directives; presentations to the task force by select groups; committee meetings; and summary of the day's work and expectations for the next meeting.

Contact: Richard Swain, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9328.

Filed: February 3, 1992, 4:19 p.m.

TRD-9201674

Tuesday, February 11, 1992, 1 p.m. The State Board of Education Task Force on Professional Preparation and Development Committee on Preservice Education and Development of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the committee will identify policy directives relative to preservice education and development.

Contact: Richard Swain, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9328.

Filed: February 3, 1992, 4:19 p.m.

TRD-9201675

Tuesday, February 11, 1992, 1 p.m. The State Board of Education Task Force on Professional Preparation and Development Committee on Continuing Staff Development of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the committee will identify policy directives relative to continuing staff development.

Contact: Richard Swain, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9328.

Filed: February 3, 1992, 4:19 p.m.

TRD-9201673

Tuesday, February 11, 1992, 1 p.m. The State Board of Education Task Force on Professional Preparation and Development Committee on Compensation and Incentive Systems of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the committee will identify policy directives relative to compensation and incentive systems.

Contact: Richard Swain, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9328.

Filed: February 3, 1992, 4:18 p.m.

TRD-9201672

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Texas Employment Commission

Tuesday, February 11, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss Administaff, Inc. versus James J. Kaster, et al., Ben Hogan versus Texas Employment Commission; and relocation of agency headquarters; actions, if any, resulting from executive session; approval of attorney's fees; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 6; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: February 3, 1992, 4:05 p.m.

TRD-9201669

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Texas Ethics Commission

Friday, February 14, 1992, 9:30 a.m. The Texas Ethics Commission will meet at the Reagan Building, Room 109, Austin. According to the agenda summary, the commission will discuss and possibly act on: hiring an executive director; rule to convene a proceeding; interagency contracts with Secretary of State; interagency contract with Department of Insurance; procedures for ad-

visory opinions; forms and reporting schedules for state political party chairpersons; request for Attorney General Opinion on Per Diem; and discuss code of conduct for Texas Ethics Commission.

Contact: Carl S. Richie, 1101 Camino La Costa, Austin, Texas 78752, (512) 406-0100.

Filed: February 3, 1992, 1:30 p.m.

TRD-9201609

Friday, February 14, 1992, 9:30 a.m. The Texas Ethics Commission will meet at the Reagan Building, Room 109, Austin. According to the revised agenda summary, the commission will discuss and possibly act on: hiring an executive director; rule to convene a proceeding; interagency contracts with Secretary of State; interagency contract with Department of Insurance; procedures for advisory opinions; Title 15 (Texas Election Code) rules; request for Attorney General Opinion on Per Diem; and discuss code of conduct for Texas Ethics Commission.

Contact: Carl S. Richie, 1101 Camino La Costa, Austin, Texas 78752, (512) 406-0100.

Filed: February 3, 1992, 4:18 p.m.

TRD-9201671

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General Services Commission

Monday, February 10, 1992, 9:30 a.m. The General Services Commission will meet at 400 West 15th Street, Suite 810, First State Bank Building, Austin. According to the complete agenda, the commission will meet in executive session to interview and consider applicants for the position of executive director of the General Services Commission, as authorized by Texas Civil Statutes, Article 6252-17, Section 2(g).

Contact: Judith M. Porras, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: January 30, 1992, 3:56 p.m.

TRD-9201482

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Texas Historical Commission

Sunday, February 2, 1992, 2:30 p.m. The Old San Antonio Road Preservation Commission of the Texas Historical Commission held an emergency meeting at St. Anthony's Hotel, Club Room, 300 East Travis Street, Austin. According to the complete agenda, the commission called the meeting to order; update on advisory board questionnaire; report of committee on tourism: tourism potential study; Central Texas Tourism Association; update on signage, reports, and education packet: 1992 Federal Highway Act; report of committee on national trail designation; discussed the Louisiana Highway Act effort; OSR historical markers; caravan Number II; and discussed other business. The emergency status was delayed due to discussions on meeting location and date.

Contact: Nancy Kenmotsu, P.O. Box 12276, Austin, Texas 78711, (512) 463-6096.

Filed: January 30, 1992, 10:43 a.m.

TRD-9201426

Friday, February 7, 1992, 2 p.m. The Texas Archeology Awareness Committee of the Texas Historical Commission will meet at the John H. Reagan Building, Room 103, 105 West 15th Street, Austin. According to the complete agenda, the committee will call the meeting to order; finalize 1993 efforts; tie up loose ends for 1992; review and discuss archeology awareness organization and direction; discuss other business; and adjourn.

Contact: Nancy Kenmotsu, P.O. Box 12276, Austin, Texas 78711, (512) 463-6096.

Filed: January 30, 1992, 10:44 a.m.

TRD-9201427

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Texas Department of Human Services

Thursday, February 13, 1992, 10 a.m. The Post-Adoption Services Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the committee will review sessions; program update; review and approval of minutes; provider's report; information sharing; and adjourn.

Contact: Susan Klickman, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3302.

Filed: February 4, 1992, 9:10 a.m.

TRD-9201688

Thursday, February 13, 1992, 10 a.m. The Ethics Advisory Committee of the Texas Department of Human Services will meet at 710 West 51st Street, Sixth Floor, West Tower, Conference Room 651W, Austin. According to the complete agenda, the committee will review ethics-related contract rules; review of ethic-related personnel rules; review of and plans for future ethics training; members' issues; and adjourn.

Contact: Paul Leche, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3106.

Filed: February 4, 1992, 9:09 a.m.

TRD-9201687

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Texas Department of Insurance

Wednesday, February 12, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Sherrell Green, of Azle and Fort Worth, who holds a Group I, Legal Reserve Life Insurance Agent's license and Group II Insurance Agent's license; and consider the application of Sherrell Green for a Local Recording Agent's license. Docket Number 11403.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: February 3, 1992, 1:28 p.m.

TRD-9201607

Thursday, February 13, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the Articles of Incorporation of Standard Casualty Company, Hye, changing the location of the principal business office and increasing the authorized capital stock. Docket Number 11412.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: February 3, 1992, 1:29 p.m.

TRD-9201608

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Legislative Oversight Committee on Workers' Compensation

Saturday, February 15, 1992, 10 a.m. The Legislative Oversight Committee on Workers' Compensation will meet at the Senate Committee Room Number One, O.C.S., 300 West 15th Street, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of the minutes of the previous meeting; status reports will be called for from Texas Workers' Compensation Insurance Fund; Texas Workers' Compensation Insurance Facility; State Board of Insurance/Texas Department of Insurance; Texas Workers' Compensation Commission; and the Texas Workers'

Compensation Research Center; a status report will be given on: the Eagle Pass Case; the Texas Impairment schedule by the staff; and adjourn.

Contact: June L. Karp, 1005 Sam Houston Building, Austin, Texas 78701, (512) 475-4991.

Filed: February 3, 1992, 2:42 p.m.

TRD-9201619

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Texas Board of Licensing for Nursing Home Administrators

Wednesday, March 11, 1992, 10 a.m. The Texas Board of Licensing for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Criss Cole Auditorium, Austin. According to the complete agenda, the board will hear public comment on the repeal of Chapter 241.3, Administrative Authority; repeal of Chapter 251, Disciplinary; repeal of Chapter 243, Application; proposed Chapter 241.3, Administrative Authority; proposed Chapter 251, Disciplinary; and proposed Chapter 243, Application. Copies of the proposed rules and rules for repeal will be available at the meeting or by calling Kim Foutz, Administrative Technician III at (512) 458-1955. The agency will accept written comments through March 20, 1992 at 5 p.m.

Contact: Kim Foutz, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: February 3, 1992, 9:53 a.m.

TRD-9201590

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State Board of Plumbing Examiners

Monday, February 10, 1992, 10 a.m. The Personnel Committee of the State Board of Plumbing Examiners will meet at 929 East 41st Street, Austin. According to the complete agenda, the committee will meet in executive session to interview applicants for the position of administrator of the Texas State Board of Plumbing Examiners and to make recommendations to the full board.

Contact: Lynn Brown, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: January 30, 1992, 11:54 a.m.

TRD-9201437

Tuesday, February 18, 1992, 10 a.m. The State Board of Plumbing Examiners will meet at 929 East 41st Street, Austin. According to the complete agenda, the board will meet in executive session to interview final applicants for the position of administrator of the Texas State Board of Plumbing Examiners and to select the new administrator.

Contact: Lynn Brown, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: January 31, 1992, 1:38 p.m.

TRD-9201529

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Public Utility Commission of Texas

Wednesday, February 19, 1992, 1 p.m. (rescheduled from Tuesday, February 18, 1992, 10 a.m.). The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10726-application for sale, transfer, or merger of Cap Rock Electric Cooperative, Inc. and Hunt-Collin Electric Cooperative, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1992, 3:24 p.m.

TRD-9201540

Thursday, February 27, 1992, 10 a.m. (rescheduled from Thursday, February 20, 1992, 10 a.m.). The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10381-Southwestern Bell Telephone Company's statement of intent to change and restructure the rates for directory assistance.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1992, 3:15 p.m.

TRD-9201666

Monday, March 16, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10875-petition for waiver from requirements of Substantive Rule 23.55 (e) (1) and (2) of Fort Bend Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1992, 3:25 p.m.

TRD-9201542

Monday, March 16, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10876-petition for waiver from requirements of Substantive Rule 23.55(e) (1) and (2) of La Ward Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1992, 3:25 p.m.

TRD-9201543

Monday, March 16, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10874-petition for waiver from requirements of Substantive Rule 23.55(e) (1) and (2) of Ganado Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1992, 3:24 p.m.

TRD-9201541

Tuesday, March 17, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10892-application of South Plains Telephone Cooperative, Inc. for waiver from requirements of Substantive Rule 23. 55(e)(1)(2).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1992, 3:15 p.m.

TRD-9201663

Tuesday, March 17, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10891-application of Taylor Telephone Cooperative, Inc. for waiver from requirements of Substantive Rule 23.55(e)(1) and (2).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1992, 3:15 p.m.

TRD-9201664

Tuesday, March 17, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800

Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10890-application of Valley Telephone Cooperative, Inc. for waiver from requirements of Substantive Rule 23.55(e)(1) and (2).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1992, 3:15 p.m.

TRD-9201665

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Texas Low-Level Radioactive Waste Disposal Authority

Monday, February 17, 1992, 8:30 a.m. The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at the John H. Reagan Building, 105 West 15th Street, Room 101, Austin. According to the agenda summary, the board will meet in executive session, pursuant to Texas Civil Statutes 6252-17, Section 2(f); discuss approval of minutes; hear committee reports; general manager's report on year-to-date financial status; discuss and approve FY 1992 budget adjustments; status of interstate and Texas compact negotiations, update on legal challenges to the constitutionality of the federal act; report on site selection hearing process; site evaluation of the two Faskin Ranch sites, site characterization of the Faskin Ranch; and the license application. Under new business, the selection of the proposed site will be considered; authorization to proceed with site hearing process; approval to submit a license application to the Texas Water Commission; approval of contract for sale of the Faskin Ranch; approval of contracts; hear public comments; and adjourn.

Contact: L. R. Jacobi, Jr., P.E., 7701 North Lamar Boulevard, #300, Austin, Texas 78752, (512) 451-5292.

Filed: February 3, 1992, 3:38 p.m.

TRD-9201668

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Railroad Commission of Texas

Monday, February 10, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 12-126, Austin. Agendas follow.

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

Filed: January 31, 1992, 10:54 a.m.

TRD-9201515

The commission will consider and act on the Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division. Consideration of the appointment of a Liquified Petroleum Gas Advisory Committee for the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711, (512) 463-7110.

Filed: January 31, 1992, 10:54 a.m.

TRD-9201516

The commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including, but not limited to, scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested cases if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act, including to receive legal advice regarding pending and/or contemplated litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7274.

Filed: January 31, 1992, 10:54 a.m.

TRD-9201517

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: January 31, 1992, 10:54 a.m.

TRD-9201514

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: January 31, 1992, 10:54 a.m.

TRD-9201513

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: January 31, 1992, 10:53 a.m.

TRD-9201512

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. Consideration of appointment, reassignment, and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: January 31, 1992, 10:53 a.m.

TRD-9201511

The commission will consider category determination under §§102(c)(1)(B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: January 31, 1992, 10:53 a.m.

TRD-9201510

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-6828.

Filed: January 31, 1992, 10:53 a.m.

TRD-9201509

The commission will conduct a strategic planning worksession in connection with the requirements of House Bill 2009 relating to strategic planning for the agency. The meeting will continue until completion.

Contact: Art Martinez, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7276.

Filed: January 31, 1992, 10:53 a.m.

TRD-9201508

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Texas Real Estate Commission

Monday, February 10, 1992, 9:30 a.m. The Texas Real Estate Commission will meet at the TREC Headquarters Office, Conference Room #235, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will discuss proposed amendments to 22 TAC Chapter 537 concerning standard contract forms; possible action to adopt proposed new §535.220 concerning inspector code of ethics; possible action to approve for publication proposed amendments to §§533.10, 533.18, and 533.25 concerning practice and procedure; to §535. 41 concerning the commission and to §535.141 concerning investigations; possible action to establish guidelines for Agency Task Force; approval of MCE providers and courses or accredited schools or courses; meet in executive session to discuss pending litigation and personnel matters; authorization of payments from recovery funds or other matters discussed in executive session; motions for rehearing and/or probation; and entry of orders in contested cases.

Contact: Camilla Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: January 30, 1992, 3:19 p.m.

TRD-9201458

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School Land Board

Tuesday, February 4, 1992, 10 a.m. The School Land Board met at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the revised agenda summary, the board discussed and gave final approval of 31 TAC §1.3 relating to recodification and amendment of School Land Board fees (formerly 31 TAC §1.91 and §155.10) (supplement to item posted on January 27, 1992 for February 4, 1992 meeting).

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: January 31, 1992, 4:45 p.m.

TRD-9201559

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Office of the Secretary of State

Friday, February 7, 1992, 10 a.m. The Elections Advisory Committee of the Secretary of State will meet at the Reagan Building, Room 109, Austin. According to the complete agenda, the committee will make welcoming remarks; take roll call and introduction of members; introductory remarks; overview of SOS election night returns; overview; programming; features of system; data entry procedures; charges for election night return services; observers report from 1991 constitutional amendment election; designation of one or more elections advisory committee members to be present on election night; and closing remarks.

Contact: Kim T. Sutton, P.O. Box 12060, Austin, Texas 78711-2060, (512) 463-5650.

Filed: January 30, 1992, 1:53 p.m.

TRD-9201446

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Texas Guaranteed Student Loan Corporation

Tuesday, February 11, 1992, 4:45 p.m. The Executive Committee of the Texas Guaranteed Student Loan Corporation will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the complete agenda, the committee will discuss personnel matters.

Contact: Peggy Irby, 12015 Park 35 Circle, Austin, Texas 78758, (512) 835-1900.

Filed: February 3, 1992, 4:25 p.m.

TRD-9201677

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Texas Water Commission

Wednesday, February 5, 1992, 9 a.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may have taken various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time. The emergency status is necessary due to unforeseeable circumstances this item must be placed on this agenda.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 30, 1992, 2:11 p.m.

TRD-9201450

Wednesday, February 12, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 30, 1992, 3:49 p.m.

TRD-9201461

Wednesday, February 12, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 30, 1992, 3:49 p.m.

TRD-9201460

Thursday, March 5, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 618, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of Pat G. Chapman.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:56 a.m.

TRD-9201525

Tuesday, March 10, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of Valero Refining Company.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:55 a.m.

TRD-9201520

Thursday, March 12, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of Continental Belton Company.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:56 a.m.

TRD-9201522

Tuesday, March 17, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of Roberts Pest Control, Inc.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:56 a.m.

TRD-9201523

Thursday, March 19, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of Timco Industries, Inc., Cletus P. Ernster, and Marvin Schumacher.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:56 a.m.

TRD-9201524

Tuesday, March 24, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of Empak, Inc.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:55 a.m.

TRD-9201521

Thursday, March 26, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 543, Austin. According to the agenda summary, the office will hold a public hearing on assessment of administrative penalties and requiring certain actions of BMC, Inc.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 31, 1992, 10:55 a.m.

TRD-9201519

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Texas Workers' Compensation Facility

Friday, February 7, 1992, 9 a.m. The Governing Committee of the Texas Workers' Compensation Facility will meet at the Guest Quarters Hotel, 303 West 11th Street, Austin. According to the complete agenda, the committee will discuss approval of minutes; consider proposed by-laws, rules and regulations; discuss facility rating rate plan; update of the rate plan filing; discuss: facility's investments; credit/underwriting guidelines; agreement with the TWCC; report on status of the claims audit; report on payment of assessments; discuss proposal from Lumbermens' Mutual Casualty Company regarding medical review expense reinbursement; request for reimbursement from servicing companies; discussion concerning the annual meeting; and meet in executive session concerning pending legal and personnel matters.

Contact: Miles L. Mathews, 8303 MoPac Expressway North, #310, Austin, Texas 78759, (512) 345-1222.

Filed: January 31, 1992, 3:04 p.m.

TRD-9201539

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Regional Meetings

Meetings Filed January 30, 1992

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging met at the Council Offices, 3006 East 29th Street, Suite #2, Bryan, February 6, 1992, at 2 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9201445.

The Dallas Central Appraisal District Board of Directors met at 2949 Stemmons Freeway, Dallas, February 5, 1992, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247-6195, (214) 631-0520. TRD-9201444.

The Dawson County Central Appraisal District Board of Directors met at 920 North Dallas Avenue, Lamesa, February 5, 1992, at 7 a.m. (revised agenda). Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 972-7060. TRD-9201443.

The East Texas Council of Governments JTPA Board of Directors met at the Ramada Inn, Highway 259, Kilgore, February 6, 1992, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9201434.

The Harris County Appraisal District Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, February 5-6, 1992, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9201431.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, February 7, 1992, at 9:30 a.m. (rescheduled from February 19, 1992). Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9201432.

The Hockley County Appraisal District Appraisal Review Board met at the Spot Restaurant, 306 College, Levelland, February 4, 1992, at 7 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9201456.

The Kaufman County Education District Board of Trustees met at 3950 South Houston Street, Kaufman, February 3, 1992, at 7 p.m. Information may be obtained from Carolyn Harrison, P.O. Box 819, Kaufman, Texas 75142, (214) 932-6081. TRD-9201459.

The West Central Texas Council of Governments Private Industry Council met at 1025 East North 10th Street, Abilene, February 6, 1992, at 10 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9201454.

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Meetings Filed January 31, 1992

The Colorado River Municipal Water District Long Range Planning and Development Committee met at 400 East 24th Street, Big Spring, February 4, 1992, at 1 p.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79720, (915) 267-6341. TRD-9201530.

The Dallas Area Rapid Transit Governmental Relations Committee met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, February 4, 1992, at 10 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201549.

The Dallas Area Rapid Transit Search Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, February 4, 1992, at 10:30 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201551.

The Dallas Area Rapid Transit Corporate Location Ad Hoc Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, February 4, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201554.

The Dallas Area Rapid Transit Rail Planning and Development Committee met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, February 4, 1992, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201550.

The East Texas Council of Governments Executive Committee met at the ETCOG Offices, Kilgore, February 6, 1992, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9201498.

The Education Service Center, Region XV Board of Directors met at the Education Service Center Region XV, 612 South Irene Street, Conference Room Number One, San Angelo, February 4, 1992, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5119, San Angelo, Texas 76902, (915) 658-6571. TRD-9201507.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, February 10, 1992, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9201499.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the MRGDC Central Office, 1904 North First Street, Carrizo Springs, February 6, 1992, at 10 a.m. Information may be obtained from Dora Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9201558.

The Middle Rio Grande Development Council Board of Directors, Middle Rio Grande Development Foundation, Inc. met at the MRGDC Central Office, 1904 North First Street, Carrizo Springs, February 6, 1992, at 11 a.m. Information may be obtained from Michael Patterson P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9201560.

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Meetings Filed February 3, 1992

The Angelina and Neches River Authority Board of Directors met at the Fredonia Hotel, Angelina Room, 200 Fredonia Street, Nacogdoches, February 4, 1992, at 9:30 a.m. The emergency status was necessary as lawyer said that we were in violation of Open Meeting Act. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795, FAX Number (409) 632-2564. TRD-9201684.

The Bell-Milam-Falls Water Supply Corporation Board met at the WSC Office, FM 485, Cameron, February 6, 1992, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9201565.

The Bexar-Medina-Atascosa Counties Water Control Improvement District Number One Board of Directors will meet at the District Office, Highway 132, Natalia, February 10, 1992, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9201580.

The Cash Water Supply Corporation will meet at the Administration Office, Greenville, February 11, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75402, (903) 883-2695. TRD-9201613.

The Deep East Texas Council of Governments Budget Committee will meet at the Jasper City Hall, 272 East Lamar Street, Jasper, February 13, 1992, at 10:30 a.m. Information may be obtained from Rick Mays, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9201579.

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Board Room, Stephenville, February 10, 1992, at 4:30 p.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9201576.

The Lower Neches Valley Authority Personnel Committee met at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, February 6, 1992, at 1:30 p. m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9201610.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the MRGDC Central Office, 1904 North First Street, Carrizo Springs, February 6, 1992, at 10 a.m. (Revised agenda). Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9201667.

The Palo Pinto Appraisal District Agricultural Advisory Board will meet at the Palo Pinto County Courthouse, Palo Pinto, February 11, 1992, at 7 p. m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250. TRD-9201615.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Palo Pinto County Courthouse, Palo Pinto, February 12, 1992, at 1:30 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250. TRD-9201614.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto County Courthouse, Palo Pinto, February 12, 1992, at 3 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250. TRD-9201616.

The Sabine Valley Center Personnel Committee held an emergency meeting at the Jefferson Independent School Administration Building, 510 South Line Street, Jefferson, February 5, 1992, at 9 a.m. The emergency status was necessary as items needed to be reviewed before the February 10, 1992 board meeting. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9201571.

The Sabine Valley Center Finance Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, February 10, 1992, at 6 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9201572.

The Sabine Valley Center Personnel Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, February 10, 1992, 6:30 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9201574.

The Sabine Valley Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, February 10, 1992, at 7 p.m. Information may be obtained from Mack O. Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9201573.

The San Antonio River Authority Water Quality Program Committee of the Board of Directors will meet at the SARA General Offices, Second Floor Conference Room, 100 East Guenther, San Antonio, February 10, 1992, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027,

(512) 227-1373. TRD-9201570.

The Sulphur River Basin Authority Board of Directors will meet at the Mt. Pleasant Chamber of Commerce Building, 1604 North Jefferson Street, Mt. Pleasant, February 11, 1992, at 3 p.m. Information may be obtained from William O. Morriss, P.O. Box 240, Texarkana, Texas 75504, (903) 793-5511. TRD-9201581.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, February 10, 1992, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280. TRD-9201577.

The Wise County Appraisal District Board of Directors will meet at 206 South State Street, Board Room, Decatur, February 13, 1992, at 7 p.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081, ext. 04. TRD-9201578.

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Meetings Filed February 4, 1992

The Austin Transportation Study Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, 26th and Red River Streets, Room 2.102, Austin. Information may be obtained from Joseph P. Gieselman, P.O. Box 1748, Austin, Texas 78767, (512) 472-7483. TRD-9201689.

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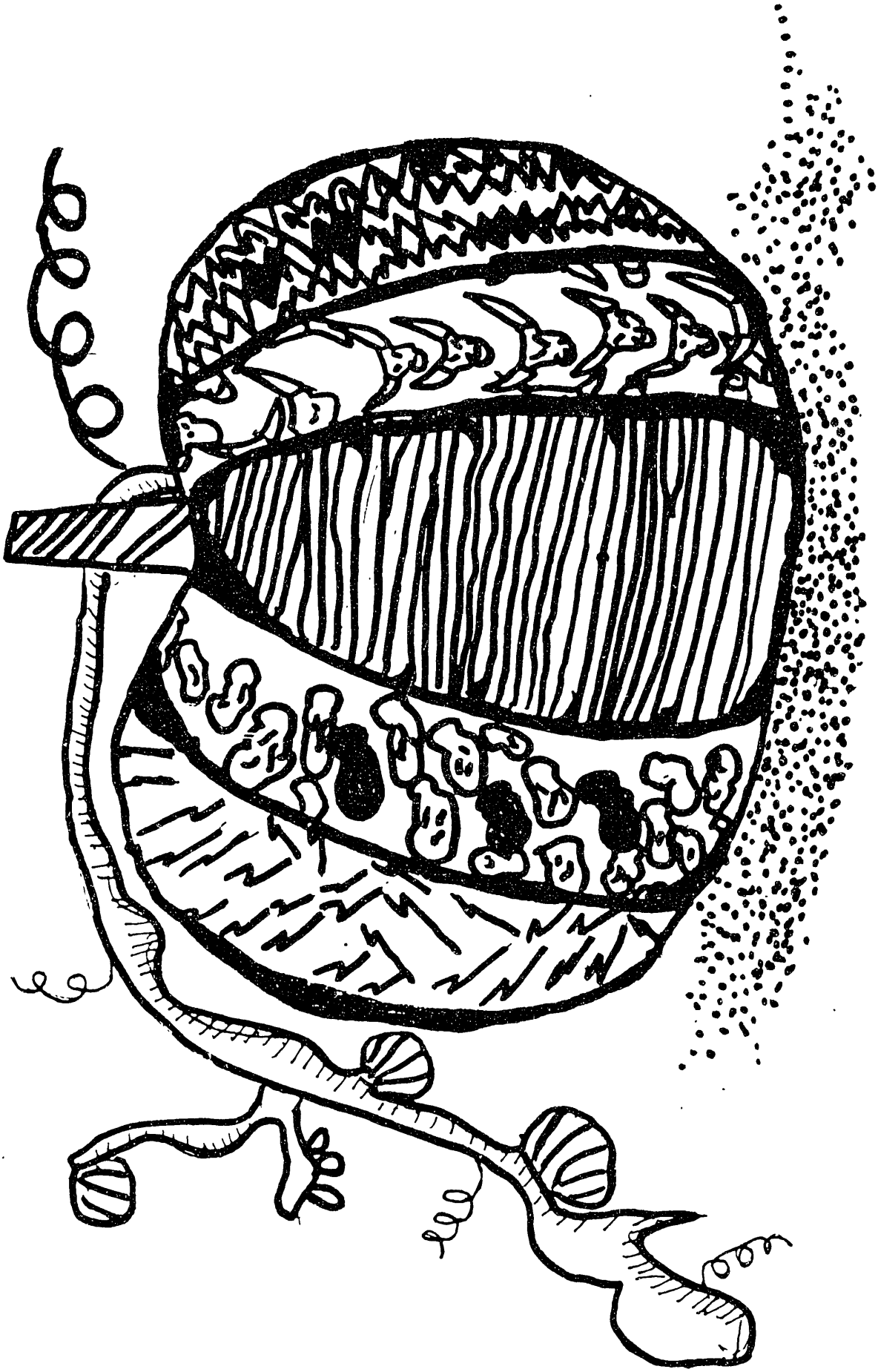

Name. Justin Topasna

Grade. 2

School Lake Highlands Elementary, Richardson ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Air Control Board (TACB) Staff is providing an opportunity for written public comment on the listed Agreed Board Orders (ABO's) pursuant to the Act of July 30, 1991, Senate Bill 2, §2.23, 72nd Legislature, 1st Called Session (to be codified in the Texas Clean Air Act at Health and Safety Code, §382.096). The Act, §382.096, requires that the TACB may not approve these ABO's unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is March 9, 1992. Section 382.096 also requires that the TACB promptly consider any written comments received and that the TACB may withhold approval of an ABO if a comment indicates the proposed ABO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an ABO are made in response to written comments.

A copy of each of the proposed ABO's is available for public inspection at both the TACB's Central Office, located at 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1000, and at the following applicable Regional Office. Written comments about these ABO's should be sent to the Staff Attorney designated for each ABO at the TACB's Central Office in Austin, and must be received by 5 p.m. on March 9, 1992. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 908-1850. The TACB Staff Attorneys are available to discuss the ABO's and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the ABO's should be submitted to the TACB in writing.

Listed are the company names and the city in which the facility is located, type of facility, rule violated, penalty, staff attorney, and regional office.

Abilene Bi-Products, Abilene, Taylor County, Meat Receiving Plant, TACB Rule 116.1, unauthorized construction, $11,700, Susan Owen, (512) 908-1842 1290 South Willis, Suite 205, Abilene, Texas 79605, (915) 698-9674.

Bath-Tec, Inc. Bardwell, Ellis County, Fiberglass Tub Manufacturing Facility, TACB Rule 116.1, constructing and operating facility without a permit. $500, Scott Humphrey, (512) 908-1847, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116 (817) 732-5531.

Central Texas Ready Mix, Inc., Dublin, Erath County, Ready Mix Concrete Plant, TACB Rule 116.4, failure to oil in-plant vehicle traffic routes to control dust emissions, failure to install water sprays, failure to keep copy of permit on-site, visible emissions, $500, Susan Owen, (512) 908-1842, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Chevron U.S.A. Incorporated, Port Arthur, Jefferson County, Petroleum Refinery, TACB Rule 101.20(2), which requires compliance with federal national emissions standards for hazardous air pollutants for equipment leaks (fugitive emission sources); TACB Rule 115.-112(a)(2)(A), which requires all covers, seals or lids on floating roof storage tanks to be in a closed position at all times, except when the device is in actual use; TACB Rule 115.-112(a)(2) (E), which requires there be no visible holes, tears or other openings in any seal or seal fabric; TACB Rule 115.322(4), failing to cap or plug open-ended valves, $18,000, Susan Jere White, (512) 908-1845, 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838 or (409) 898-3790.

Gore's, Inc., Comanche, Comanche County, Dairy, TACB Rule 116.1, unauthorized construction, $7, 500, Bill Zeis, (512) 908-1844, 1290 South Willis, Suite 205, Abilene, Texas 79605, (915) 698-9674.

Mobil Pipeline Company, Beaumont, Jefferson County, Petroleum Product Storage and Loading Facility, TACB Rule 115.212(a)(3)(C), loading VOC's into tanker with avoidable visible leak; TACB Rule 115.214(1), Failing to conduct inspection for visible leaks; TACB Rule 115.214(2), Failing to cease loading after discovery of the leak, $2,000, Scott Humphrey, (512) 908-1847, 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838.

Occidental Chemical Corporation, Deer Park, Harris County, Organic Chemical Manufacturing, TACB Rule 101.20(2), which requires compliance with federal national emissions standards for hazardous air pollutants for vinyl chloride, $3, 500, Bill Zeis, (512) 908-1844, 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Oxford Cleaners, Carrollton, Dallas County, Dry Cleaners, TACB Rule 115.521, failure to install a properly functioning control device such that emissions are limited to no more than 100 parts per million (ppm) before dilution, $0.00, Stephen D. Journeay, (512) 908-1856, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Quality Cabinets, Duncanville, Dallas County, Cabinet manufacturing, TACB Rule 116.4, failure to comply with volatile organic compound limitations in permit, $13,000, David Duncan, (512) 908-1855, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Ride-On Motors, Garland, Dallas County, Motor Vehicle Sales Operation, TACB Rule 114.1(c) , offering for sale in

the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the motor vehicles were originally equipped. $500, Susan Owen, (512) 908-1842, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

Suoco Oil Corporation, Pampa, Gray County, Demolition Operation, TACB Rule 101.20(2), which requires compliance with federal national emissions standards for hazardous air pollutants (asbestos), $31,500, Scott A. Humphrey, (512) 908-1847, 5302 South Avenue Q, Lubbock, Texas 79412, (806) 744-0090 or (806) 744-6055.

Tip Top Cleaners, Houston, Harris County, Dry Cleaning Facility, TACB Rule 115.521, failing to vent the entire dryer exhaust through a properly functioning carbon adsorption system or equally effective control device, such that emissions of perchloroethylene are limited to no more than 100 ppm before dilution; TACB Agreed Board Order Number 89-01(h), $450, Kevin R. Jung, (512) 908-1848, 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Tip Top Cleaners, Houston, Harris County, Dry Cleaning Facility, TACB Rule 115.521, failing to vent the entire dryer exhaust through a properly functioning carbon adsorption system or equally effective control device, such that emissions of perchloroethylene are limited to no more than one hundred (100) ppm before dilution, $900, Kevin R. Jung, (512) 908-1848, 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Tip Top Cleaners, Webster, Harris County, Dry Cleaning Facility, TACB Rule 115.521, failing to vent the entire dryer exhaust through a properly functioning carbon adsorption system or equally effective control device, such that emissions of perchloroethylene are limited to no more than one hundred (100) ppm before dilution, $900, Kevin R. Jung, (512) 908-1848, 5555 West Loop, Suite 300, Bellaire, Texas 77401 or (713) 666-4964.

Tivoli Realty, Inc., Dallas, Dallas County, Asbestos Demolition, TACB Rule 101.20(2), failure to comply with federal National Emissions Standards for Hazardous Air Pollutants (asbestos), $17,000 David Duncan, (512) 908-1855, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531 or (817) 732-5532.

United Galvanizing, Inc., Houston, Harris County, Metals galvanizing, TACB Rule 116.1, undertaking construction without first obtaining a permit, $4,150, David Duncan, (512) 908-1855, 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201591 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Filed. February 3, 1992

For further information, please call: (512) 908-1451

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Alamo Area Council of Governments

Request for Proposals

Proposals are being solicited for entering into a contract for the implementation of the San Antonio-Bexar County Metropolitan region Land Use Activity Allocation Models. This project, to be conducted in 1992, will provide land use modeling capability at Alamo Area Council of Governments and the Metropolitan Planning Agency in order to examine the significant interaction which exists between regional land use patterns and transportation demand. A copy of the scope of work will be furnished upon request. Anyone wishing to submit a consultant proposal request must do so by March 12, 1992, at the address listed below.

The Alamo Area Council of Governments intends to award this contract by the end of March 1992. The value of the proposed scope of services would be for a maximum of $20,000 this fiscal year. Further inquiries as to the scope of work should be directed to: Shelley A. Whitworth, Transportation Specialist, Alamo Area Council of Governments, 118 Broadway, Suite 400, San Antonio, Texas 78205.

Issued in San Antonio, Texas, on January 30, 1992.

TRD-9201575 Al J. Notzon, III
Executive Director
Alamo Area Council of Governments

Filed: February 3, 1992

For further information, please call: (512) 225-5201

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Children's Trust Fund of Texas Council

Correction of Error

The Children's Trust Fund of Texas Council submitted an announcement of the availability of funds to establish programs to prevent child abuse and neglect. The notice was published in the January 3, 1992, *Texas Register* (17 TexReg 65). Due to a typographical error by the *Texas Register* the phone number for Community of Caring in Washington, DC was printed with an incorrect Area Code. The phone number should read "(202) 393-1250".

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	02/03/92-02/09/92	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	02/01/92-02/29/92	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on January 27, 1992.

TRD-9201374 Al Endsley
Consumer Credit Commissioner

Filed: January 29, 1992

For further information, please call: (512) 479-1280

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General Land Office

Consultant Contract Award

Pursuant to Texas Civil Statutes, Article 6252-11c, the General Land Office announces the award of a contract for market research study to assess Texas residents' attitudes, perceptions, and awareness toward recycling in general and toward purchasing recycled products in particular. The contract is denominated GLO Contract Number 92-0128-R.

The request for proposals to provide these services was published in the November 19, 1991, issue of the *Texas Register* (16 TexReg 6705).

The consultant is to develop a questionnaire based on a given description of study requirements in consultation with the General Land Office and to collect market data from 1,200 telephone interviews with specified groups of respondents.

The contract has been awarded to Andrew Martin, Ph.D., doing business as Opinions Unlimited, 8201 Southwest 34th Street, Amarillo, Texas 79121.

The amount of the contract is $23,999. The project will be completed by April 6, 1992.

The consultant will submit a report of final disposition which will contain a descriptive treatment of all relative variables, supported by a graphic presentation of results and conclusions drawn by the consultant.

Issued in Austin, Texas, on January 28, 1992.

TRD-9201420 Garry Mauro
Commissioner
General Land Office

Filed: January 30, 1992

For further information, please call: (512) 463-5394

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Texas Department of Health

Notice of Intent to Revoke a Certificate of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: James W. Bailey, III, D.D.S., Tyler, R13957.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fees are paid and the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fees are not paid or the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, The Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on January 31, 1992.

TRD-9201544 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 31, 1992

For further information, please call: (512) 835-7000

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

The Texas Department of Housing and Community Affairs (TDHCA) announces that a public hearing will be held to receive comments on the proposed 1992 program year state plan for the Texas Weatherized Assistance for Low-Income Persons (WAFLIP) Program.

The public hearing will be held at 10 a.m. on Wednesday, February 19, 1992, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue (part of the centralized capitol complex), Austin. At the hearing, TDHCA representatives will provide descriptions of the Weatherization Assistance Program and the proposed use of United States Department of Energy funds, the Low-Income Home Energy Assistance Block Grant funds, and

Petroleum Violation Escrow funds for the program year which begins on April 1, 1992.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the Weatherization Assistance Program State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by February 19, 1992, to Mr. Larry Crumpton, Director of Community Affairs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704.

Copies of the proposed state plan will be available during the second week in February. A copy may be requested by calling Mr. J. Al Almaguer at (512) 474-2974 ext. 154 or by writing Mr. Almaguer at the address given previously.

Issued in Austin, Texas, on January 28, 1992.

TRD-9201569 Larry Crumpton
Director of Community Affairs
Texas Department of Housing and Community Affairs

Filed: February 3, 1992

For further information, please call: (512) 475-3802

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Texas Department of Human Services

Health and Human Services Commission Pilot Project to Improve Client Access to Services

Notice to communities, agencies, coalitions, and other health and human service entities to submit information for consideration as a pilot project. The Governor's Office invites communities, agencies, coalitions, and other health and human service entities to submit information for consideration as a pilot project to demonstrate improved client access to services that will make existing service resources available to consumers in a more convenient, nonduplicative manner. These projects will be implemented as directed in House Bill 7 (HB7), passed by the Texas Legislature in the summer of 1991. Material contained in a packet prepared by the HB7 Transition Team includes requirements for responding to this invitation. Responses to the packet will be evaluated on these requirements and overall compatibility with the intent of HB7.

Background. Access is a critical issue in delivery of health and human services. Persons in need of services and those who provide services have identified problems and barriers such as the inability to schedule office visits at convenient hours, the necessity for clients to repeat information to multiple agencies, and barriers to sharing information between agencies. The impact of these and other problems is that individuals and families needing services frequently are not able to get what they need and experience significant frustration in trying to maneuver through the service system. House Bill 7 seeks to address these problems and provide assistance in reducing or eliminating the impediments to services. This bill lays the foundation for major revamping of the state's health and human services delivery system by establishing a framework for health and human service agencies to work together in a more cohesive fashion. The bill aims to help people get the services they need, eliminate the confusing patchwork of programs and services in local communities, and stimulate broad planning at the state level by Health and Human Services Commission (HHSC) agencies. The intent is to focus services around the needs of individuals or families rather than around separate agencies, programs, or funds. The bill also intends to enhance the efficiency and effectiveness of service delivery in the state through collaboration and coordination of services. As a first step in accomplishing these tasks, the bill sets out certain requirements for development and testing of a client access package to be implemented as a demonstration project in at least three pilot sites. One pilot is to be located in each of three counties (one rural, one medium, and one metropolitan), based on population. The pilot sites selected will work with the HHSC to refine and test the impact of a client access package. Sites selected as a result of this invitation will meet the intent and specifications of HB7 and will be instrumental in policy decisions to extend service delivery improvements statewide.

Availability of Funds. A primary objective of this effort is to use existing funding and other resources in more creative ways that will result in more effective client access. Funds will not be available to expand or add additional services. Funds may be available for planning, initial collaboration, automation support, and other tools necessary for implementation of the access package; however, specifics on dollar amounts are unavailable at this time. Seed money has been identified, and potential funding sources have expressed interest in fostering and/or evaluating collaborative initiatives. A multi-agency workgroup has been charged with pursuing these options, and with identifying and providing assistance in securing additional resources. Commitment of actual funds will be negotiated individually with selected project sites.

Proposal Scope. Proposed pilots are to address the following parameters, which are defined in the packet: collaboration; co-location; centralized client intake; agency worker scheduling system; computer-based integrated eligibility determination system; coordinated information and referral system; provisions for addressing architectural, communication, programmatic, and transportation Barriers; and case management.

To Request a Packet. To obtain a packet, contact House Bill 7 Transition Team, Office of the Governor, Sam Houston Building, Room 205, 201 East 14th Street, Austin, Texas 78701, (512) 465-4718.

Closing Date. Proposals must be received by 5 p.m. on March 5, 1992. Selection of pilot project sites will be completed by April 1, 1992; and implementation will began no later than September 1, 1992.

Proposal Evaluation. Each proposal will be evaluated on the following components, which are defined in the packet: current environment; proposed project-general, description; proposed project-project parameters; proposed project-summary; and budget. The final selection of the three pilot projects will be made by the Health and Human Services Commissioner.

Issued in Austin, Texas, on February 3, 1992.

TRD-9101584 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: February 3, 1992

For further information, please call: (512) 450-3765

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Request for Proposals

The Texas Department of Human Services (DHS), Protective Services for Families and Children Division, is requesting written proposals to fulfill certain requirements of the United States Department of Health and Human Services grant award entitle Project ENABLE: Education Network for Adoption Building Lasting Environments.

Requirements. The development of an educational model on post-adoption service needs which will improve professionals' awareness, assessment, and treatment of special needs children and adoptive families; depict the profile of the adoptive child; describe the unique needs of adoptive children, recount the dynamics of the adoption process; and acknowledge that adoption is a lifelong process; and provision of a one day training module to a minimum of 500 individuals statewide, consisting of public/private adoption and mental health providers and other adoption support personnel. The training is to be offered in each of the ten DHS administrative regions.

Eligibility. Eligible offerors include public entities, private agencies and organizations, and individuals possessing expertise in child and family services with an emphasis on child placing, adoption, and post adoption issues. Offerors must have demonstrated success in development of educational models, accompanying curriculum, and the provision of training.

Contact Person. To receive bid packets and additional information, please contact Susan Klickman W-415, Program Specialist, Texas Department of Human Services, 701 West 51st Street, Austin, Texas 78751, (512) 450-3302.

Terms and Amount of Contract. The contract amount will not exceed $71,500 for the first 12 month period. If the department elects to renew the contract for a second 12 month period, the contract amount would not exceed $71, 500.

Closing Date. The closing date for receipt of proposals is March 23, 1992.

Evaluation and Selection. Proposals will be evaluated and selected base on bidder's qualifications, quality of proposal, and proposed budget.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201585 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: February 3, 1992

For further information, please call: (512) 450-3765

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Texas Department of Insurance

Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L

The Texas Department of Insurance hereby notifies all insurers of the "rate change date," as required by the Texas Insurance Code, Article 5.55, §1(5) regarding workers' compensation insurance rates. As amended by House Bill 62 (72nd Texas Legislature 1991), Article 5.55 provides that the "rate change date" means the later of March 1, 1992, or the 60th day after the date of issuance of the first insurance policy by the Texas Workers' Compensation Insurance Fund under Article 5.76-3 of the Texas Insurance Code. The fund issued its first policy on January 1, 1992. The "rate change date," the later of March 1, 1992 or the 60th day after January 1, 1992, is March 1, 1992.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on February 3, 1992.

TRD-9201568 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: February 3, 1992

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

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Texas Parks and Wildlife Department

Notice of Public Hearing

Notice is hearby given that Seagull Natural Gas Company, 1001 Fannin, Suite 1777, Houston, Texas 77002, has applied to the Texas Parks and Wildlife Department for an easement to lay a natural gas and condensate pipeline across the Peach Point Wildlife Management Area in Brazoria County.

The executive director of the department has appointed a hearing examiner to conduct a hearing as authorized by Chapter 26, Texas Parks and Wildlife Code, as follows: March 3, 1992, 10 a.m., Room A-200, Texas Parks and Wildlife Department, Headquarters Building, 4200 Smith School Road, Austin, Texas 78744.

The applicant may appear in person or by attorney to present evidence supporting its application. This hearing will be held under the authority of and in accordance with Chapter 26 of the Texas Parks and Wildlife Code and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon Supplement 1992).

The record of the proceeding will include evidence and testimony taken at the public hearing. Evidence or testimony may be presented orally or in writing, subject to the requirements of the Administrative Procedure and Texas Register Act. The hearing may be continued from time to time and place to place, if necessary, to develop all relevant evidence bearing on the subject of the hearing. The examiner retains the right to schedule or reschedule hearings as necessary. Further information concerning the basis of this proceeding, if available, may be obtained by contacting John Foshee, Land Management Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 389-4806.

Information concerning any procedures of the hearing or scheduling may be obtained by contacting the undersigned at the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 389-4867.

Issued in Austin, Texas, on January 31, 1992.

TRD-9201531 Jennifer Mellett
Hearing Examiner
Texas Parks and Wildlife Department

Filed: January 31, 1992

For further information, please call: (512) 389-4867

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Public Utility Commission of Texas

Notices of Intent To File Pursuant To PUC 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 PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Methodist Hospital, Houston.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Methodist Hospital pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 10907.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Methodist Hospital. The geographic service market for this specific service is the Houston area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 29, 1992.

TRD-9201452 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 30, 1992

For further information, please call: (512) 458-0100

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for General Services Administration, Fort Worth.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for General Services Administration pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 10709.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for General Services Administration. The geographic service market for this specific service is the Fort Worth area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 30, 1992.

TRD-9201453 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 30, 1992

For further information, please call: (512) 458-0100

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Senate Interim Committee on Health and Human Services

Public Meeting Notice

The Senate Interim Committee on Health and Human Services will hold a work session in Austin on February 6, 1992, to discuss and adopt committee recommendations pertaining to private psychiatric and substance abuse services.

The work session will begin at 1:30 p.m. in Room 109 of the John H. Reagan Building at 105 West 15th Street. Visitor parking is available at 15th Street and Congress Avenue. Although the committee does not plan to take any testimony, the work session is an open meeting, and the public is encouraged and welcomed to attend.

If you have any questions or need additional information, please feel free to call the committee office at (512) 463-0360.

Issued in Austin, Texas, on January 29, 1992.

TRD-9201417 Sandra Bernal-Malone
Committee Clerk
Senate Interim Committee on Health and Human Services

Filed: January 29, 1992

For further information, please call: (512) 463-0360

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The Texas A&M University System, System Human Resources

Request for Proposal

In accordance with the Texas Insurance Code, Article 3.50-3, as amended, the Texas A&M University System (TAMUS) announces a request for proposals (RFP) to implement and administer a fully-insured self-administered group health/dental plan, to include point-of-service preferred provider organization networks throughout the state. Such proposals will relate to the administration of the group health coverage for the A&M System during the six fiscal years 1993-1998, beginning September 1, 1992. Proposals should include, but not be limited to, schedules of benefits to be provided for in-area (in-network and out-of-network) and out-of-area, guaranteed rates, descriptions of network service areas, provider lists, provider contractual arrangements, provider credentialing, and financial and incentive arrangements.

Firms wishing to respond to this request must have superior recognized expertise and specialized in administering fully-insured, experienced-rated group health/dental plans and preferred provider organization (PPO) networks.

The RFP instructions which detail information regarding the project are available upon request from the Texas A&M University System.

The deadline for receipt of proposals in response to this request will be 4 p. m., March 13, 1992.

TAMUS reserves the right to accept or reject any proposals submitted. TAMUS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

TAMUS intends to use responses as a basis for further negotiations of specific project details. TAMUS will base

its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria. TAMUS shall not designate and will not pay commissions to an agent of record or a commissioned representative.

This RPP does not commit TAMUS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates TAMUS to award a contract or to pay any cost incurred in the preparation of a response. TAMUS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where TAMUS deems it to be in its best interest.

To obtain copies of the RPF instructions, please submit a written request to Mr. Steven W. Hassel, The Texas A&M University System, System Human Resources, 1005 East University Drive, College Station, Texas 77840, FAX: (409) 845-5281. For questions or further information regarding this notice, contact Mr. Steven W. Hassel, Assistant Executive Director of Human Resources, at (409) 845-5282.

Issued in College Station, Texas, on January 28, 1992.

TRD-9201441 Patricia L. Couger
Executive Director, System Human Resources
The Texas A&M University System

Filed:January 30, 1992

For further information, please call: (409) 845-2026

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Texas Water Commission

Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to City of Bridgeport (Permit 10389-02) on January 15, 1992, assessing $9,000 in administrative penalties with $2,000 deferred and foregoned pending compliance. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 24, 1992.

TRD-9201428 Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: January 30, 1992

For further information, please call: (512) 463-7898.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to City of Venus (Permit 10883-01) on January 15, 1992, assessing $8,800 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 24, 1992.

TRD-9201429 Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: January 30, 1992

For further information, please call: (512) 463-7898.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Dikes, Irene (Permit 03085) on January 15, 1992, assessing $12,920 in administrative penalties with $4,920 deferred and possibly waived pending compliance. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 24, 1992.

TRD-9201430 Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: January 30, 1992

For further information, please call: (512) 463-7898.

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Texas Workers' Compensation Research Center

Goals

The Texas Workers' Compensation Research Center proposes the following seven goals for its work during the next six years. The goals will be submitted to the Legislative Budget Board and the Governor's Office for further consideration.

The first goal shall be to undertake research and report to the Texas Legislature regarding: the delivery of benefits; workers' compensation litigation and controversy; insurance rates and ratemaking procedures; the rehabilitation and reemployment of injured workers; workplace health and safety issues; quality and cost of medical benefits; drugs in the workplace, giving priority to public and private establishments in which drug abuse could have dire consequences to the public, and including a survey designed to identify future needs and current efforts of private and public employers to counter-attack drug abuse and its effects in the workplace; and other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

The second goal shall be to serve as a center for data collection and coordination for information regarding workers' compensation.

The third goal shall be to be a credible resource on

workers' compensation issues.

The fourth goal shall be to carry out the specific mandates of the 71st Texas Legislature by January 1, 1993, specifically to conduct studies relating to: the feasibility and effectiveness of vocational rehabilitation programs; the effectiveness of insurance deductibles; the effectiveness of arbitration as a method of dispute resolution; the cost-effectiveness of providing mandatory workers' compensation through a state-administered, employer-financed workers' compensation self-insurance program modeled on the current Texas Unemployment Insurance Trust Fund and Act but taxed on 100% of payroll; and the feasibility and effectiveness of alternative models for a state workers' compensation insurance fund.

The fifth goal shall be to operate the Center in an efficient and effective manner.

The sixth goal shall be to fully respond to the Texas Legislature, governmental entities, and citizens in a timely fashion regarding workers' compensation issues.

The seventh goal shall be to conduct quarterly board meetings.

Comments on the proposed goals may be submitted to June Karp, Legislative Oversight Committee, P.O. Box 12068, Austin, Texas, 78711. Comments must be received by February 24, 1992.

Issued in Austin, Texas, on January 31, 1992.

TRD-9201552 June L. Karp
Director
Legislative Oversight Committee on
Workers' Compensation for the Texas
Workers' Compensation Research
Center

Filed: January 31, 1992

For further information, please call: (512) 475-4991

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Mission Statement

The Texas Workers' Compensation Research Center proposes the following mission statement to be presented to the Legislative Budget Board and the Governor's Office. The mission statement shall read: To conduct and coordinate factual, fair, and unbiased research and produce professional studies regarding the workers' compensation system.

Comments on the proposed mission statement may be submitted to June Karp, Legislative Oversight Committee, P.O. Box 12068, Austin, Texas, 78711. Comments must be received by February 24, 1992.

Issued in Austin, Texas, on January 31, 1992.

TRD-9201555 June L. Karp
Director
Legislative Oversight Committee on
Workers' Compensation For the Texas
Workers' Compensation Center

Filed: January 31, 1992

For further information, please call: (512) 475-4991

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Performance Measures

The Texas Workers' Compensation Research Center proposes the following performance measures for consideration by the Legislative Budget Board and the Governor's Office.

The performance measures to be evaluated shall be: number of reports generated; number of responses to inquiries from legislators, citizens, and governmental officials; number of board meetings; number of staff meetings with other entities.

Comments on the proposed performance measures may be submitted to June L. Karp, Legislative Oversight Committee, P.O. Box 12068, Austin, Texas, 78711. Comments must be received by February 24, 1992.

Issued in Austin, Texas, on January 31, 1992.

TRD-9201553 June L. Karp
Director
Legislative Oversight Committee on
Workers' Compensation For the Texas
Workers' Compensation Center

Filed: January 31, 1992

For further information, please call: (512) 475-4991

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Research Agenda

The Texas Workers' Compensation Research Center proposes the following research agenda to be completed in 1992.

The Texas Workers' Compensation Research Center shall conduct studies, in the context of the Texas Workers' Compensation system, relating to the feasibility and effectiveness of vocational rehabilitation programs; the effectiveness of insurance deductibles; the effectiveness of arbitration as a method of dispute resolution; the cost-effectiveness of providing mandatory workers' compensation through a state-administered, employer-financed workers' compensation self-insurance program modeled on the current Texas Unemployment Insurance Trust Fund an Act but taxed on 100% of payroll; and the feasibility and effectiveness of alternative models for a state workers' compensation insurance fund.

Comments on the proposed research agenda may be submitted to June Karp, Legislative Oversight Committee, P.O. Box 12068, Austin, Texas 78711. The board will hold a public hearing to receive public comment, if a hearing is requested.

The publication of the research agenda brings the Research Center into compliance with its statutory requirement found in Texas Civil Statutes, Article 8308-11.03.

Issued in Austin, Texas on January 31, 1992.

TRD-9201526 June L. Karp
Director
Legislative Oversight Committee on
Workers' Compensation For the Texas
Workers' Compensation Center

Filed: January 31, 1992

For further information, please call: (512) 475-4991

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

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