

Texas Register

Volume 17, Number 32, May 1, 1992

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- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- 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- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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.

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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 *Tex Register* indexes, the *Texas Administrative Code*, section numbers, or T# number.

Texas Administrative Code

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

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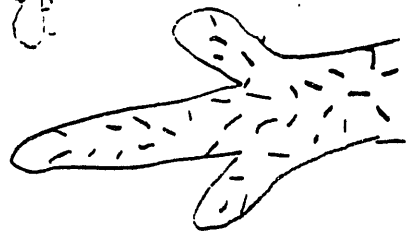
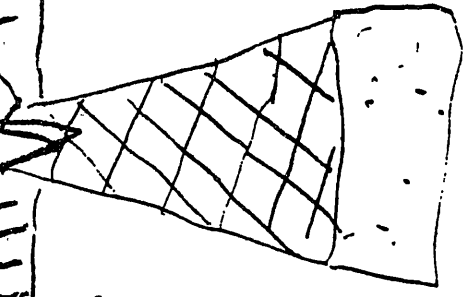
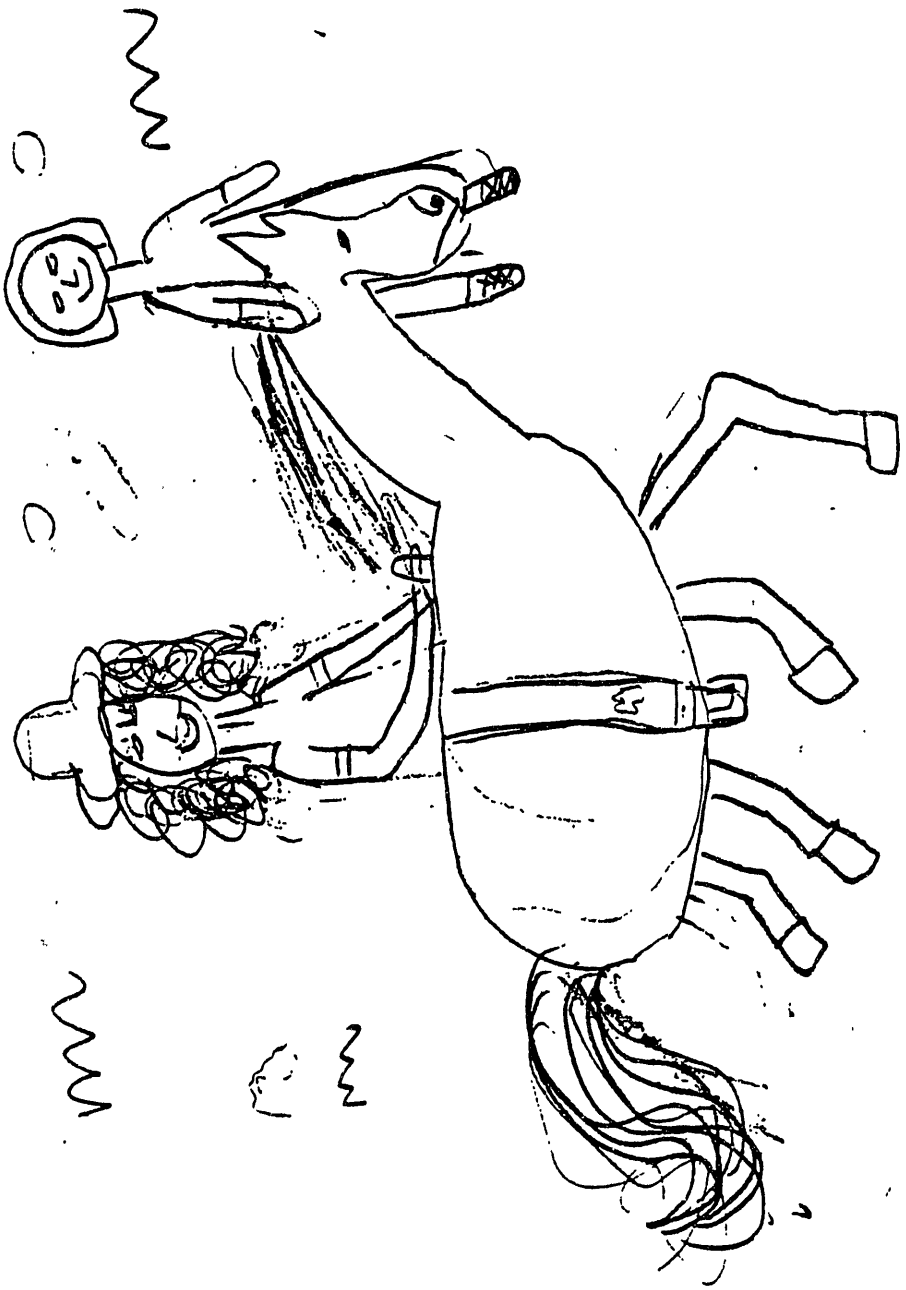
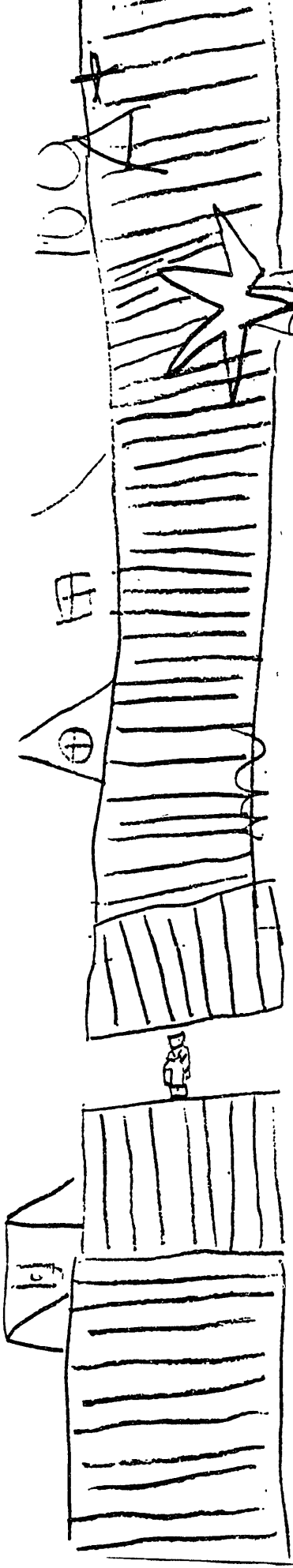
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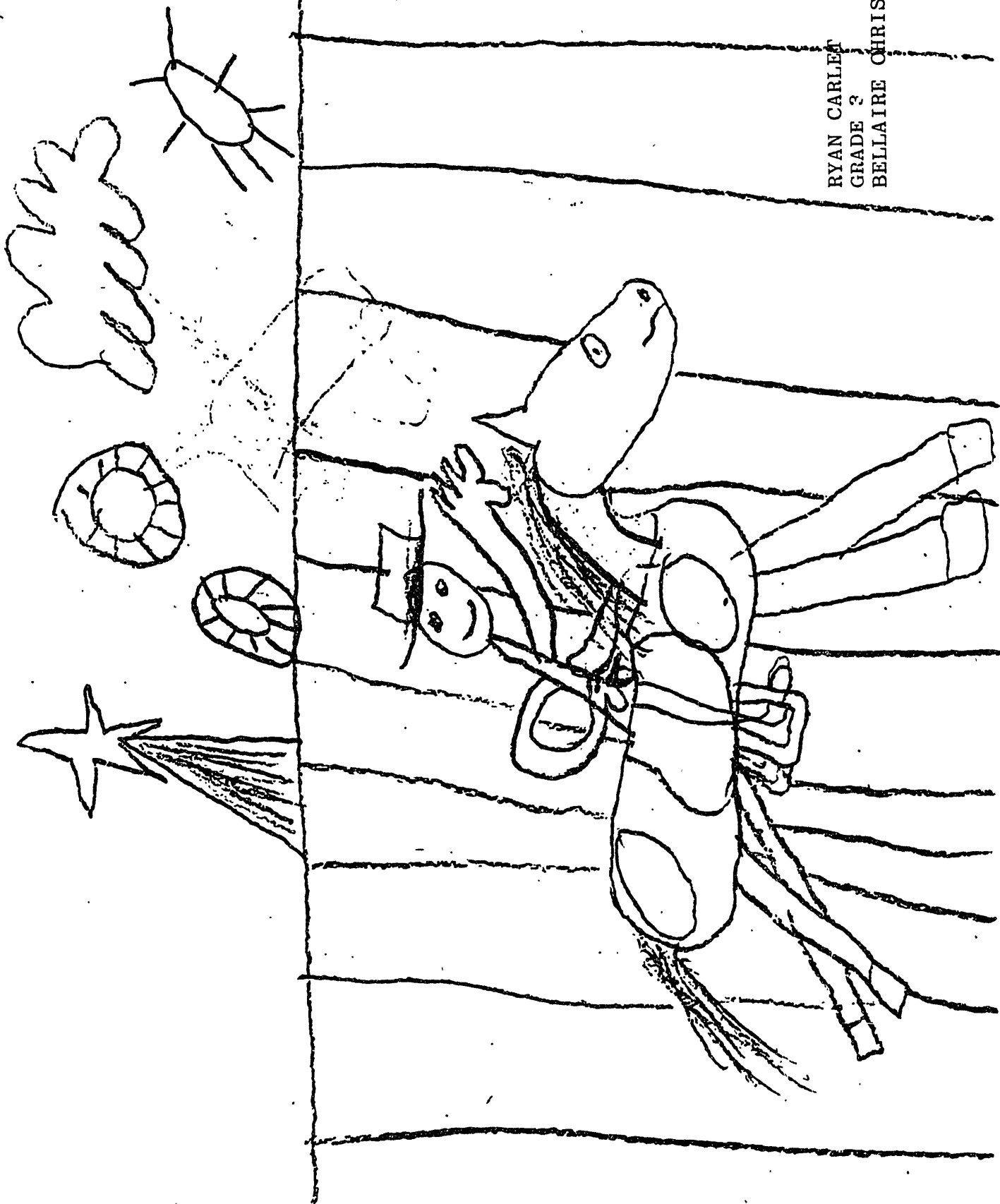
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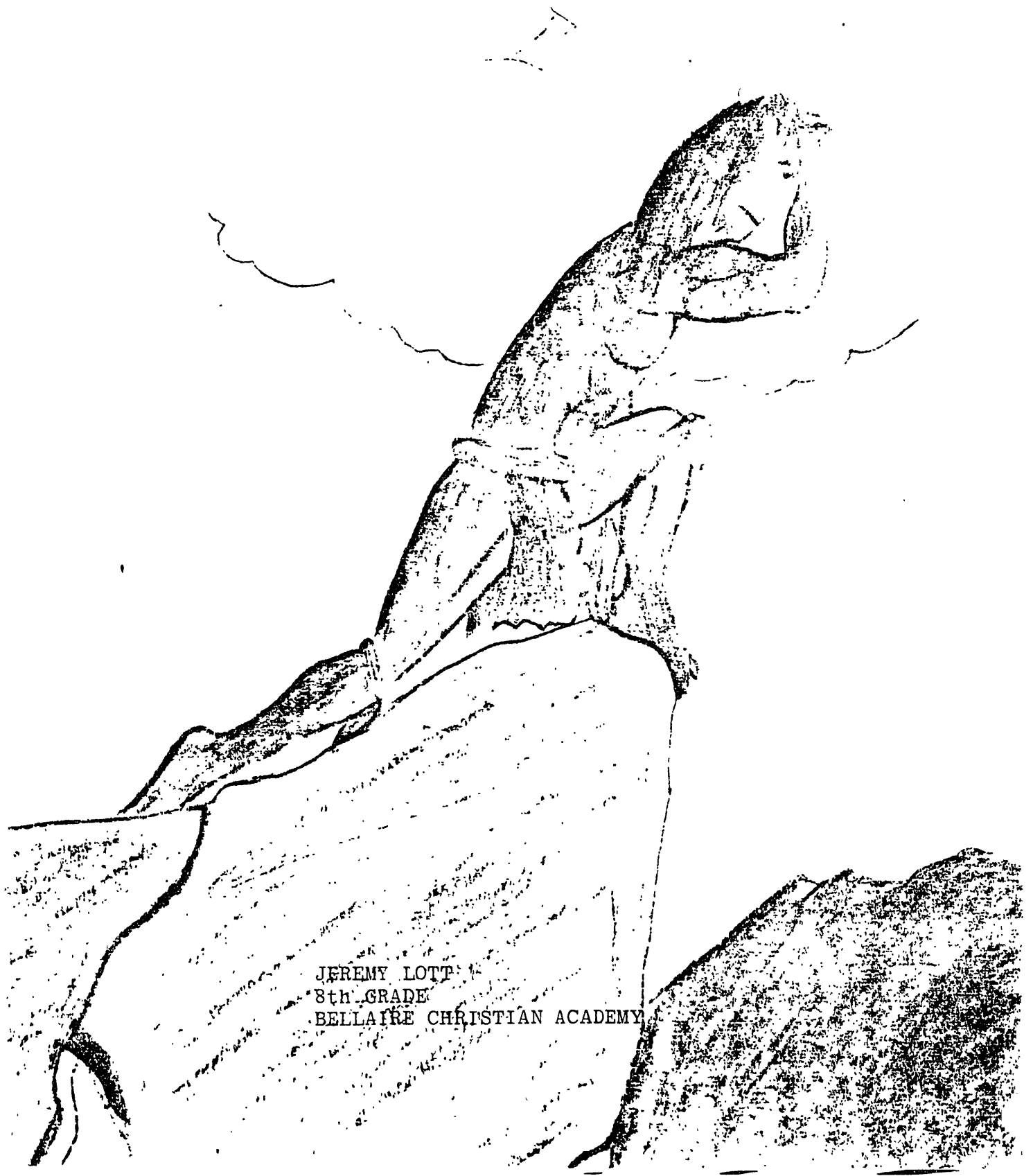
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Emergency Sections

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 330. Municipal Solid Waste

Subchapter A. General Information

• 31 TAC §330.5

The Texas Water Commission (TWC) adopts on an emergency basis an amendment to §330.5, concerning definitions. The amendment is adopted on an emergency basis to implement the provisions of Senate Bill 1340, 72nd Legislature 1991, which created the Waste Tire Recycling Fund. Waste Tire Recycling Fund rules were adopted by the Texas Department of Health (TDH) in the December 7, 1991, issue of the *Texas Register* (16 TexReg 7503). On March 1, 1992, TWC assumed jurisdiction over the Waste Tire Recycling Fund Program from TDH pursuant to Senate Bill 2, 72nd Legislature, 1991. TWC has conducted an assessment of the rules adopted by TDH and determined that emergency revisions to TDH rules are necessary in order to effectively administer, manage, and implement the Waste Tire Recycling Fund program in the State of Texas.

The Waste Tire Recycling Fund Program as implemented by TWC would oversee the clean-up of the state's illegal tire dump sites as well as provide management of the approximately \$17 million new waste tires anticipated to be produced by the citizens of Texas annually. Any further delay in implementing the Waste Tire Recycling Fund Program to clean-up illegal tire dump sites and manage newly generated waste tires poses a imminent peril to the public health, safety, and welfare of the citizens and environment of the State of Texas because of the continuous threat of diseases from vector breeding, vermin infestation, and the potential for fire that is created from the stockpiling of whole used or scrap tires. Therefore, TWC believes that an urgent need exists to warrant the adoption of this amendment on an emergency basis.

Section 330.5 contains amended and new definitions to clarify the terms used in the Waste Tire Recycling Fund (WTRF) Program.

The amendment is adopted on an emergency basis under the Texas Water Code (Vernon

1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and the Texas Solid Waste Disposal Act, (the Act), Texas Health and Safety Code Annotated, Chapter 361 (Vernon 1992), §361.484 which provides the Texas Water Commission with the authority to promulgate rules reasonably necessary to implement the Waste Tire Recycling Fund Program.

§330.5. *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.

Commission—Texas Water Commission

Executive director—Executive director of the Texas Water Commission

Facility—All contiguous land, and structures, other appurtenances, and improvements on the land, used for shredding, storing, or disposing of whole used or scrap tires or shredded tire pieces.

Mobile tire shredder—A piece of equipment used to split, [shred, or] quarter, [quarter] or shred tires which is mounted on wheels or is skid-mounted and is hauled from place to place.

Operator—The person responsible for the overall operation of the facility.

Owner—The person who owns the facility or part of a facility.

Recyclable material—[A] Material that has been recovered or diverted from the [nonhazardous] solid waste stream for purposes of reuse, recycling, energy recovery, 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 material 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.

Shredded tire piece—A particle of a used or scrap tire that has been split, [shredded,] quartered, or shredded [split].

Waste tire facility—An registered [approved] facility at which whole used or

[and] scrap tires are [collected and deposited and] shredded to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery.

Waste tire processor—A waste tire facility, or a mobile tire processor [shredder,] that splits, quarters, or shreds, [or quarters] tires and delivers to an end user the split, shredded, or quartered tires for eventual recycling, reuse, or energy recovery at either a waste tire storage facility or a waste tire facility.

Waste tire storage facility—An approved facility at which whole used or [and] scrap tires or shredded tire pieces are collected and stored (before being offered as material) to facilitate the future removal of useful materials for recycling, reuse, or energy recovery.

Waste tire transporter—A transporter who collects and transports whole used or [and] scrap tires or shredded tire pieces for storage, processing, or disposal.

Issued in Austin, Texas, on April 23, 1992.

TRD-9205583

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: April 22, 1992

Expiration date: August 20, 1992

For further information, please call: (512) 463-8069

Subchapter R. Management of Whole Used or Scrap Tires

The Texas Water Commission (TWC) adopts on an emergency basis the repeal of §§330.801-330.802, 330.804-330.863, and 330.865 that were recodified from Title 25 Texas Administrative Code (TAC) to Title 31 of the TAC in the *Texas Register* on March 3, 1992 (17 TexReg 1651) and adopts on an emergency basis new §§330.801-330.802, 330.805-330.810, 330.811-330.818, 330.821-330.828, 330.831-330.840, 330.841-330.848, 330.851-330.857, 330.861-330.867, 330.871-330.880, and 330.891, concerning the management of whole used or scrap tires and the Waste Tire Recycling Fund Program. The new sections are adopted on an emergency basis to implement the provisions of Senate Bill 1340, 72nd Legislature 1991, which created the Waste Tire Recycling Fund program. The Texas Department of Health (TDH) adopted Waste Tire Recycling Fund rules on December 7, 1991

(16 TexReg 7503). On March 1, 1992, the TWC assumed jurisdiction over the Waste Tire Recycling Fund Program from the TDH pursuant to Senate Bill 1640, 72nd Legislature, 1991. The TWC has conducted an assessment of the rules adopted by the TDH and determined that emergency revisions to the TDH rules are necessary in order to effectively administer, manage and implement the Waste Tire Recycling Fund Program in the State of Texas.

The Waste Tire Recycling Fund Program as implemented by the TWC would oversee the clean-up of the state's illegal tire dump sites as well as provide management of the approximately 17 million new waste tires anticipated to be produced by the citizens of Texas annually. Any further delay in implementing the Waste Tire Recycling Fund Program to clean-up illegal tire dump sites and manage newly generated waste tires poses an imminent peril to the public health, safety, and welfare of the citizens and environment of the State of Texas because of the continuous health threat posed by vector breeding, vermin infestation, and the potential for fire that is created through the stockpiling of whole used or scrap tires at illegal tire sites. Therefore, the TWC believes that an urgent need exists to warrant the adoption of these amendments and new sections on an emergency basis.

The title to 31 Texas Administrative Code (TAC), Chapter 330, new Subchapter R, indicates that this subchapter concerns the management of whole used or scrap tires. New §330.801 states that the purpose of the Waste Tire Recycling Fund is to establish procedures and requirements for the safe storage, transportation, processing, and disposal of whole used or scrap tires or shredded tire pieces. New §330.802(a) states that this subchapter is applicable to persons that are involved in the generation, transportation, processing, storage, and recycling of whole used or scrap tires regulated by the commission. New §330.802(b) indicates that a tire becomes a whole used or scrap tire when it is discarded by a person after it has been utilized on an automobile, van, bus, truck, trailer, semi-trailer, truck tractor and semi-trailer combination or recreational vehicle with a rim diameter equal to or greater than 12 inches but less than 26 inches for any period of time. New §330.802(c) states that all used tires are subject to manifesting by registered generators, instead of transporters, under §330.807 (relating to Generators of Whole Used or Scrap Tires).

New §§330.805-330.810, concerns generators of whole used or scrap tires. New §330.805 explains the applicability and responsibility of generators of whole used or scrap tires under this subchapter. New §330.805(a) defines a generator as a person that accepts whole used or scrap tires for storage, is a fleet operator, or is a new or used tire retailer, wholesaler, manufacturer, or retreader. New §330.805(b) states that a generator is responsible for ensuring that whole used or scrap tires are transported by a registered transporter and must inquire into or dictate the delivery destination of the generated tires. New §330.805(c) states the prohibition applicable to generators of whole

used or scrap tires and requires all whole used or scrap tires or shredded tire pieces transported from a generator's location to be manifested in a separate identifiable load. New §330.806 requires a generator that regularly disposes of whole used or scrap tires to obtain a registration number from the executive director. New §330.807 indicates the record keeping requirements applicable to generators. New §330.808(a) states that a generator of whole used or scrap tires may store those same tires at the location where the tires are generated for a period of not greater than 90 days. The whole used or scrap tires stored by the generator must be transported off-site within 90 days of their accumulation. New §330.808(b) indicates that only a registered transporter can remove a collection container of whole used or scrap tires for off-site removal. The container must be manifested and taken to a registered processing or storage facility. New §330.808(c) delineates the responsibilities of wholesalers and retailers that sell whole used or scrap tires as a commodity. New §330.809(a) contains the transportation requirements applicable to generators of whole used or scrap tires. New §330.809(b) states that a generator may transport his or her own whole used or scrap tires provided the generator has obtained a tire transporter registration from the executive director. Generators who do not transport their own tires must only use a tire transporter that is registered by the executive director. New §330.809(c) excludes the transportation of reusable tires, manufacturers, retreaders, fleet operators, and storage site owners or operators of whole used or scrap tires from the prohibition against the charging of a fee on or after April 1, 1992, to the wholesale or retail dealer for collecting whole used or scrap tires for delivery to a waste tire facility or for collecting or shredding whole used or scrap tires accepted for temporary storage. New §330.809(d) states the records requirement that a generator must maintain whenever used or defective tires are shipped back to the manufacturer or manufacturer's representative. New §330.809(e) allows generators to use local controls and records to satisfy the TWC's requirements, provided the local controls are substantially equivalent or more stringent and the executive director has approved the use of the local controls. New §330.810 contains the penalties that are applicable to a generator that violates the provisions in this subchapter.

New §§330.811-330.818, concerns transporters of whole used or scrap tires. New §330.811 provides clarification of the applicability of §330.811 and the responsibilities of transporters of whole used or scrap tires under this subchapter. New §330.812(a) states that a transporter of whole used or scrap tires must obtain registration from the executive director prior to commencing operations. In addition, new §330.812(b)-(e) specifically states the requirements necessary for a transporter to obtain registration and the situations which trigger the submission of a new registration application to the executive director. New §330.812(f) includes procedures for the suspension or denial of an initial or renewal registration. New §330.812(f)(1)(B) delineates that the failure of a transporter to maintain vehicles in safe working order as

evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies is a basis for suspension or denial of an initial or renewal registration. New §330.812(f)(2) explains the length of a TWC suspension or revocation of a transporter registration. New §330.812(f)(3) contains the procedures that a transporter must follow to reapply for registration however, a revocation is permanent if the registration has been revoked by the TWC for a second time. New §330.812(f)(4) outlines the hearing procedures that a transporter must follow to appeal the suspension, revocation or denial of initial or renewal registration. New §330.812(g) indicates that transport vehicles operated by the enumerated governmental entities are exempt from the registration requirements of this section but are not exempt from manifesting requirements. New §330.813 states the delivery requirement applicable to transporters of whole used or scrap tires. New §330.814 contains the vehicle and equipment standards applicable to transporters. New §330.815(a) contains the manifesting and record keeping requirements applicable to transporters. New §330.815(b) further delineates a transporter's responsibility to maintain records and report to the executive director. New §330.815(c) allows transporters to use local controls and records to satisfy the TWC's requirements provided, the local controls are substantially equivalent or more stringent and the executive director has approved the use of the local controls. New §330.816 states that interstate transportation applies to the transportation of whole used or scrap tires. New §330.817(a) indicates that transporters are to pay an annual registration fee to the executive director based on the total number of whole used or scrap tires or shredded tire pieces transported. New §330.817(b) states that the total annual amount of shredded tire pieces transported shall also be used in calculating a transporter's registration fee. Likewise, new §330.817(c) indicates that the transporter fee schedule shall also be calculated according to the total number of whole used or scrap tires or shredded tire pieces transported annually. New §330.818 contains a penalties provision which is applicable to transporters that violate the provisions of this subchapter.

New §§330.821-330.828, concerns mobile tire processors of whole used or scrap tires. New §330.821(a) provides standards applicable to mobile tire processor includes the shredding and collecting of whole used or scrap tires. New §330.821(b) states that mobile tire processors are responsible for ensuring that whole used or scrap tires that are split, quartered, or shredded are transported to a waste tire facility or a waste tire storage facility or a recycling facility that will recycle, reuse, or recover for energy the tire pieces. New §330.821(c) states that each mobile tire processor that participates in the WTRF must ensure that generated shredded tire pieces are delivered to a recycling, reuse or energy recovery facility. New §330.821(d) excludes the collecting and shredding of whole used or scrap tires received from manufacturers, retreaders, fleet operators and storage site owners or operators of whole used or scrap tires from the prohibition that prevents a mobile tire processor from charging a fee on or

after April 1, 1992, to the wholesale or retail dealer for collecting and shredding whole used or scrap tires accepted for temporary storage. New §330.822(a) states that a mobile tire processor operating a mobile tire shredder must obtain registration for his or her operation from the executive director. New §330.822(b) states that a mobile tire processor must maintain a copy of the registration form and the registration number must be displayed at the place of business and in each vehicle used to shred whole used or scrap tires. New §330.822(c) indicates that applications for renewal of a mobile tire processor's registration must meet the same requirements contained in §330.822(a) of this section. New §330.822(d) states that mobile tire processors must provide written notice to the executive director within 15 days of any of the enumerated changes in their registration. New §330.822(d)(4) denotes that an increase in the amount of mobile tire shredding equipment owned or operated by the mobile tire processor is an event that will require notice of a change of registration to the executive director. New §330.822(d)(5) further indicates that a change in the assigned area of the mobile tire processor's assigned area also requires notice to the executive director. New §330.822(e) specifically states the situations which trigger the submission of a new mobile tire processor registration application to the executive director. New §330.822(f)(1)(A)-(M) states the grounds and procedures for the suspension or denial of an initial or renewal of a mobile tire processor's registration. New §330.822(f)(1)(B) states that the failure of a mobile tire processor to maintain vehicles in safe working order as evidenced by at least two citations from the Texas Department of Public Safety or local traffic law enforcement agencies is a basis for suspension or denial of an initial or renewal registration. New §330.822(f)(2) explains the length of a TWC suspension or revocation of a mobile tire processor's registration. New §330.822(f)(3) contains the procedures that a mobile tire processor must follow to re-apply for registration, however, a revocation is permanent if the registration has been revoked by the TWC for a second time. New §330.822(f)(4) outlines the hearing procedures that a mobile tire processor must follow to appeal the suspension, revocation or denial of initial or renewal registration. New §330.822(g) requires each mobile tire processor to provide requisite evidence of financial responsibility. New §330.823 denotes the delivery requirement applicable to mobile tire processors includes whole used or scrap tires or shredded tire pieces. New §330.824(a) states the vehicle and equipment standards for mobile tire processors. New §330.824(b) requires a mobile tire processor to be equipped or have access to a scale to weigh the whole used or scrap tires before shredding and the shredded tire pieces immediately after shredding. Any scale not certified by the Texas Department of Agriculture (TDA) must be supported by documentation as to why the scale cannot be certified and calibration documentation equivalent to the TDA must be provided to the executive director on a monthly or quarterly basis from the manufacturer of the scale. New §330.825(a) states the record keeping requirements applicable to mobile tire proces-

sors. These records must be made available to the executive director upon request. New §330.825(b) further delineates the required records that a mobile tire processor must maintain. New §330.825(c) requires mobile tire processors to submit an annual report to the executive director showing the number of whole used or scrap tires collected, shredded, the disposition of such tires, and the amount by weight of shredded tire pieces delivered to a waste tire facility, a waste tire storage facility or recycling, reuse, or energy recovery facility. The annual report shall be prepared on a form provided by the executive director. New §330.826 explains the operational requirements for mobile tire processors. New §330.827(a) indicates that a mobile tire processor is eligible for reimbursement from the Waste Tire Recycling Fund (WTRF) provided such processor complies with §§330.871-330.881 (relating to Waste Tire Recycling Program). New §330.827(b) states additional compliance requirements for the shredding of whole used or scrap tires. New §330.827(c) requires that the mobile tire processor possess valid registration from the executive director as a further condition of eligibility for the WTRF. New §330.827(d) requires that all tires shredded for WTRF reimbursement must have been generated from within the boundaries of Texas. New §330.828 contains a penalties provision that is applicable to mobile tire processors that violate the requirements of this subchapter.

New §§330.831-330.840, concerns storage of whole used or scrap tires or shredded tire pieces. New §330.831(a) requires permitting or registration of persons that store whole used or scrap tires or shredded tire pieces on a temporary basis. New §330.831(b)(1) requires all persons intending to store whole used or scrap tires or shredded tire pieces to properly register their property with the executive director. New §330.831(b)(2) requires tire transporters or processors that deliver whole used or scrap tires or shredded tire pieces at their waste tire storage facility or mobile tire processor location to be properly registered with the executive director. New §330.831(b)(3) requires landowners and/or operators to ensure proper manifesting of the whole used or scrap tires or shredded tire pieces delivered by waste tire transporters or mobile tire processors or waste tire facilities to their waste tire storage facility. New §330.831(b)(4) requires landowners and/or operators of waste tire storage facilities to obtain all necessary and appropriate state and local permits, licenses, or registrations and to operate in compliance with such permits, licenses, or registrations, or applicable state or local codes. New §330.832(a) denotes the method of classifying a waste tire storage facility. New §330.832(b) states that the executive director shall classify all waste tire storage facilities. New §330.832(b)(1) delineates that whole used or scrap tires stored at a Type VIII-WT facility (less than 500 whole used or scrap tires) must be transported off-site within 90 days following their accumulation. New §330.832(b)(2) indicates that storage of whole used or scrap tires at a Type VIII-R facility (more than 500 whole used or scrap tires or an equivalent amount of shredded tire pieces) that are not designated as reusable whole tires, is limited to 60

days from delivery date. Storage of shredded tire pieces in a Type VIII-R facility is limited to 12 months unless the executive director grants written authorization for a longer period because the recycling market cannot accommodate the shredded tire pieces. New §330.832(b)(3) contains the definition of a Type VIII-S facility (a tire monofill that contains shredded tire pieces equivalent to or greater than 500 whole used or scrap tires). New §330.832(b)(4) provides that a Type VIII-L facility is a waste tire storage facility that stores more than 500 whole used or scrap tires and is considered by the executive director to be an illegal tire site and are to be handled through the Priority Enforcement List (PEL), routine inspection and enforcement activities. New §330.832(b)(5) states that a Type VIII-L consists of a designated recycling collection areas at a permitted municipal solid waste landfill. Whole used or scrap tires may be stored at a Type VIII-L facility for a period of 120, days from delivery. Storage at a Type VIII-s facility is long term and requires the issuance of a permit from the commission. New §330.833(a) requires a waste tire storage facility to obtain registration number from the executive director. Generators, except for waste tire storage facilities, that temporarily accumulate whole used or scrap tires for delivery to a waste tire storage facility, are exempted from obtaining registration from the executive director. New §330.833(b) requires that the application for registration of a waste tire storage facility must be made to the executive director. The application must also contain the additional information enumerated in §330.833(b)(1)-(5) in order for the executive director to complete processing. A waste tire storage facility registration shall be issued upon receipt and approval of an administratively and technically complete application. New §330.833(c) requires the application for registration to be in writing on a form provided by the executive director. New §330.833(d) reiterates that classified waste tire storage facilities that have obtained a registration number are subject to the specific requirements of this subchapter. New §330.834(a) states that an applicant seeking registration for a Type VIII-R facility or a permit for a Type VIII-S facility must submit evidence of financial responsibility to the executive director for evaluation and approval. New §330.834(c) requires the applicant to submit an estimate of the total amount by weight of shredded tire pieces that the facility will store or process and the number of whole used or scrap tires that will be stored at the waste tire storage facility during processing. The applicant must also estimate the cost of cleaning up and closing the facility using the total amounts of whole used or scrap tires or shredded tire pieces stored at the facility. New §330.835(a)(1) states that a Type VIII-R waste tire storage facility must obtain registration forms from the executive director. Registration forms shall be provided by the executive director upon request. New §330.835(a)(2) states that persons that obtain a Type VII-R facility registration number that is obtained from the executive director must maintain a copy of the registration form and the registration number must be displayed at the designated place of business and at the designated storage facility location. New

§330.835(a)(3) indicates that Type VIII-R facility registration expires 36 months from the date of issuance. Applications for renewal of a Type VIII-R facility registration must be submitted at least 60 days prior to expiration. New §330.835(a)(4) states that Type VIII-R facility owners and/or operators must provide written notice to the executive director within 15 days of a change to their registration if any of the changes enumerated in this section occur. New §330.835(a)(5) specifically states the situations which trigger the submission of a new Type VIII-R facility registration application to the executive director. New §330.835(a)(6) details the specific grounds and procedures for the suspension or denial of an initial or renewal of a Type VIII-R facility registration. Upon suspension or revocation of a Type VIII-R storage facility registration, the owner or operator must remove all whole used or scrap tires or shredded tire pieces within 60 days from the date of suspension or revocation. New §330.835(a)(7) outlines the preparation and submission procedures for an application for a Type VIII-R storage facility. New §330.835(b) denotes the design requirements for a Type VIII-R storage facility. New §330.835(c) contains the requirements for concerning Type VIII-R waste tire storage facility operating plan. New §330.835(d) specifies the record keeping requirements for a Type VIII-R waste tire storage facility. New §330.836 establishes the permit requirements that a Type VIII-S facility must meet in order to be permitted by the commission. Permit application forms are to be provided by the executive director. New §330.837 delineates the registration requirements for a Type VIII-L waste tire storage facility that seeks to designate a recycling collection area for the collection and storage of whole used or scrap tires. A registration number for the collection area must be obtained from the executive director and the Type VIII-L waste tire storage facility is allowed to accumulate whole used or scrap tires for a period not to exceed 90 days. New §330.838 contains the requirements for a Type VIII-WT waste tire storage facility. New §330.839 specifies the criteria that a waste tire storage facility must meet in order to be eligible for the Waste Tire Recycling Fund (WTRF) program. New §330.840 provides penalties for a registrant or permittee or site operator of a waste tire storage facility that violates the provisions of this subchapter.

New §§330.841-330.848, concerns waste tire facility processors of whole used or scrap tires. New §330.841 states the applicability and responsibility of waste tire facilities concerning the requirements of this subchapter. New §330.842 contains the classification and standard of operation applicable to a waste tire facility. New §330.843 contains the registration requirements for a waste tire facility. New §330.843(g)(1) includes the specific grounds and procedures for the suspension or denial of an initial or renewal waste tire facility registration. New §330.843(g)(2) explains the length of a TWC suspension or revocation of a transporter registration. New §330.843(g)(3) contains the procedures that a transporter must follow to re-apply for registration however, a revocation is permanent if the registration has been revoked by the TWC for a second time. New §330.843(g)(4) outlines the hearing procedures that a trans-

porter must follow to appeal the suspension, revocation or denial of initial or renewal registration. New §330.844 contains the financial responsibility requirements applicable to a waste tire facility. New §330.845 contains the record keeping requirements that a waste tire facility must implement. New §330.846 requires the waste tire facility to deliver or have delivered the shredded tire pieces that received reimbursement from the WTRF only at a commission permitted or registered waste tire storage facility. New §330.847 contains the eligibility criteria for the WTRF that must be met by a waste tire facility prior to reimbursement. New §330.848 contains a penalties provision that is applicable to an owner or operator of a waste tire facility that violates the requirements of this subchapter.

New §§330.851-330.857, concerns disposal of whole used or scrap tires. New §330.851 states the applicability and responsibility of waste tire disposal facilities concerning the requirements of this subchapter. New §330.852 establishes disposal procedures for whole used or scrap tires. New §330.853 establishes permit requirements and procedures for a waste tire disposal facility. New §330.854 concerns requirements for existing waste tire disposal facilities. An existing waste tire disposal facility that intends to remain in operation must submit a permit application to the executive director prior to June 1, 1992. A waste tire disposal facility that elects to close must submit an application for a registration number to the executive director prior to June 1, 1992. New §330.855 contains the final cover requirements for all tire monofill sites. New §330.856 contains the eligibility criteria for the WTRF that must be met by a waste tire disposal facility prior to reimbursement. New §330.857 contains a penalties provision applicable to an owner or operator of a waste tire disposal facility that violates the requirements of this subchapter.

New §330.861 denotes the applicability of the Priority Enforcement List (PEL) and the responsibility of a Potentially Responsible Party (PRP) to the waste Tire Recycling Fund (WTRF) Program. New §330.862 defines a PRP, establishes the duties of a PRP and establishes an administrative penalty procedure wherein a potentially responsible party of an illegal waste tire site is informed through a Notice of Violation (NOV) letter that the executive director considers him or her as a PRP and the actions that the PRP must take to clean-up or forego clean-up of the illegal waste tire site. New §330.863 explains the PEL and the executive director's requirements to maintain, publish and update the PEL. New §330.864 explains the four criteria utilized by the executive director to rank an illegal tire site that is eligible for placement on the priority enforcement list (PEL) on a scale of one to 10 with one being the lowest. New §330.865 contains the procedure to be utilized by the executive director in the assignment of PEL sites to a waste tire facility or mobile tire processor. New §330.865(a)(3) requires a waste tire facility or mobile tire processor to agree in writing to indemnify and hold harmless the commission and its employees and officers against any and all liability, loss or damage arising out of or in connection with any work performed pursuant to this

subchapter. New §330.865(a)(7) requires the waste tire facility or mobile tire processor to complete the clean-up of the assigned PEL site prior to assignment of new PEL sites. New §330.865(c) states that clean-up of a PEL site can begin after the processor or mobile tire processor has signed the site clean-up agreement with the executive director and after the property owner has signed an access agreement allowing access to the PEL site. New §330.866 contains the post PEL clean-up responsibilities required from the property owner of a PEL site. New §330.867 states the authority that commission personnel have at an assigned PEL site.

New §§330.871-330.880, concerns the Waste Tire Recycling Fund (WTRF) Program. New §330.871 establishes the standards and procedures for operation of the WTRF and the responsibility under this subchapter of each person that intends to participate in the WTRF. New §330.872 describes the purpose, objective and operation of the WTRF Program. New §330.872(e)(6) allows for a special category of whole used or scrap tires to be eligible for reimbursement upon review and approval of the category by the executive director. New §330.873 concerns announcement of intent to participate, requires waste tire facilities or mobile tire processors to notify the executive director in writing within five days of receipt of the updated PEL of their intent to be assigned new PEL sites and include in priority order, the sites requested to be assigned to them. New §330.873(c) states that within 10 days of receipt of the waste tire facility's or mobile tire processor's intent to participate, the executive director is required to evaluate their job performance on previously assigned PEL sites to determine whether the work was performed to the executive director's satisfaction. After the executive director's review and satisfaction of job performance, notice of the assignment of an additional PEL site or group of sites must be provided to the waste tire facility or mobile tire processor. A copy of the site clean-up agreement is to accompany the executive director's site assignment notification. New §330.873(d) designates all of the requirements that must be met by the waste tire facility or mobile tire processor before clean-up of the newly assigned PEL can begin. New §330.874(a) provides for the site clean-up agreement as a guarantee of job performance to be executed between the executive director and the registered waste tire facility or mobile tire processor that intends to receive reimbursement from the WTRF. New §330.874(b) lists the specific requirements that are to be included in the site clean-up agreement. New §330.874(c) states that if a waste tire facility or mobile tire processor's registration is suspended or revoked by the commission, then the PEL sites remaining to be cleaned-up in the site clean-up agreement shall be reassigned. New §330.875 concerns the public notice of intent to operate requirements that a waste tire facility or mobile processor must meet prior to commencement of shredding activity. New §330.876 states that mobile tire processors or waste tire facilities that intend to participate in the WTRF must obtain all required registrations or permits that are applicable to their operation. New §330.877 contains the requirements that a mobile tire

processor or waste tire facility must meet in order to receive approval from the executive director to collect and process tires from PEL sites. New §330.878 contains the shipping, record keeping and reporting requirements for mobile tire processors or waste tire facilities that participate in the WTRF. New §330.878(e) outlines the procedure for processing the reimbursement voucher and the information that must be contained in the voucher. The voucher shall be on a form supplied by the executive director. New §330.879 explains the WTRF reimbursement policies and procedures. New §330.880 outlines payment to waste tire facilities or mobile tire processors. A waste tire facility or mobile tire processor that desires reimbursement from the WTRF must demonstrate during a calendar month that all tires for which payment is sought have been shredded to a particle size not larger than nine square inches and not less than 25% of the tires collected came from a PEL site and not less than 25% of the tires collected came from generators of whole used or scrap tires. A waste tire facility or mobile tire processor that exceeds the 25% requirement from a PEL or generator shall receive credit for the amount in excess of 25% and may be used by the waste tire facility or mobile tire processor to meet the 25% requirement during a later month.

New §330.891 concerns special conditions for beneficial use of whole used or scrap tires.

• **31 TAC §§330.801, 330.802, 330.804-330.863, 330.865**

The repeals are adopted on an emergency basis under the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and the Texas Solid Waste Disposal Act, (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.484 which provides the Texas Water Commission with the authority to promulgate rules reasonably necessary to implement the Waste Tire Recycling Fund Program.

§330.801. *Purpose.*

§330.802. *Applicability.*

§330.804. *Applicability and Responsibility.*

§330.805. *Notification and Identification Number.*

§330.806. *Recordkeeping.*

§330.807. *On-Site Accumulation.*

§330.808. *Transportation Requirements.*

§330.809. *Applicability and Responsibility.*

§330.810. *Registration.*

§330.811. *Delivery Requirements.*

§330.812. *Vehicle and Equipment Sanitation Standards.*

§330.813. *Recordkeeping.*

§330.814. *Interstate Transportation.*

§330.815. *Transporter Fees.*

§330.816. *Penalties.*

§330.817. *Applicability and Responsibility.*

§330.818. *Registration.*

§330.819. *Delivery Requirements.*

§330.820. *Vehicle and Equipment Requirements.*

§330.821. *Recordkeeping.*

§330.822. *Operational Requirements.*

§330.823. *Eligibility for the Waste Tire Recycling Fund (WTRF).*

§330.824. *Penalties.*

§330.825. *Applicability and Responsibility.*

§330.826. *The Storage Site Classification.*

§330.827. *Tire Site Identification.*

§330.828. *Evidence of Financial Responsibility.*

§330.829. *Requirements for a Type VIII-R Site.*

§330.830. *Requirements for a Type VIII-S Site.*

§330.831. *Requirements for a Type VIII-L Site.*

§330.832. *Requirements for a Type VIII-WT Site.*

§330.833. *Eligibility for the Waste Tire Recycling Fund (WTRF) Programs.*

§330.834. *Penalties.*

§330.835. *Applicability and Responsibility.*

§330.836. *Waste Tire Facility Classification and Operation.*

§330.837. *Registration Requirements.*

§330.838. *Evidence of Financial Responsibility.*

§330.839. *Recordkeeping.*

§330.840. *Delivery Requirements.*

§330.841. *Eligibility for the Waste Tire Recycling Fund (WTRF) Program.*

§330.842. *Penalties.*

§330.843. *Applicability and Responsibility.*

§330.844. *Disposal of Tires.*

§330.845. *Permit Requirements.*

§330.846. *Existing Tire Disposal Sites.*

§330.847. *Final Cover Requirements.*

§330.848. *Eligibility for the Waste Tire Recycling Tire Fund (WTRF) Program.*

§330.849. *Applicability.*

§330.850. *Responsible Party.*

§330.851. *Priority Enforcement List.*

§330.852. *Ranking of Sites.*

§330.853. *Release of Priority Enforcement Sites.*

§330.854. *Post Cleanup Responsibilities.*

§330.855. *Authority of Department's Representative.*

§330.856. *Applicability and Responsibility.*

§330.857. *Water Tire Recycling Program.*

§330.858. *Announcements of Intent to Participate.*

§330.859. *Other Permits or Registration Required.*

§330.860. *Approval to Collect and Process Tires From Priority Enforcement List.*

§330.861. *Waste Tire Processor Eligibility Requirements.*

§330.862. *Shipping, Recordkeeping, and Reporting Requirements.*

§330.863. *Payments Policies and Procedures.*

§330.865. *Beneficial Use of Used and Scrap Tires.*

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TRD-9205582 Mary Ruth Holder
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Texas Water Commission

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◆ ◆ ◆
• 31 TAC §§330.801-330.802,
330.805-330.818, 330.821-330.828,
330.831-330.848, 330.851-330.857,
330.861-330.867, 330.871-330.880,
330.891

The new sections are adopted on an emergency basis under the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and the Texas Solid Waste Disposal Act, (the Act), Texas Health and Safety Code, Chapter 361 (Vernon 1992), §361.484 which provides the Texas Water Commission with the authority to promulgate rules reasonably necessary to implement the Waste Tire Recycling Fund Program.

§330.801. *Purpose.* The purpose of the rules in this subchapter is to establish procedures and requirements for the safe storage, transportation, processing, and disposal of whole used or scrap tires, or shredded tire pieces.

§330.802. *Applicability.*

(a) The sections in this subchapter are applicable to persons that are involved in the generation, transportation, processing, storage, disposal, and recycling of whole used or scrap tires regulated by the Texas Water Commission (commission or TWC) pursuant to §303 of this title (relating to applicability).

(b) A tire becomes a whole used or scrap tire when it is discarded by a person after it has been utilized on an automobile, van, bus, truck, trailer, semi-trailer, truck tractor, and semi-trailer combination or recreational vehicle with a rim diameter equal to or greater than 12 inches but less than 26 inches for any period of time. A used tire that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire is subject to the requirements of this subchapter, except as noted in §330.891 of this title (relating to the Beneficial Use of Whole Used or Scrap Tires): A whole used tire that cannot be reused for any other purpose is a scrap tire and is subject to the requirements of this subchapter.

(c) A whole used or scrap tire may include tires which can be reused for another purpose. Whole used or scrap tires that can be salvaged and used for another purpose, retreaded, or sold as a good used vehicle tire are exempted from the requirements to be split, quartered, or shredded at processing sites. All used tires will be subject to manifesting by registered generators in accordance with the requirements in §330.807 of this title (relating to Generators of Whole Used or Scrap Tires). Tire stockpiles being held for adjustment by the manufacturer must be classified by the manufacturer for reuse or disposal within 90 days. Used tires being held for resale that are stockpiled shall receive appropriate vector control made at a frequency based upon weather conditions and other applicable local ordinances.

§330.805. *Generators of Whole Used or Scrap Tires.*

(a) *Applicability.* The regulations contained in these sections establish standards applicable to the generators of whole used or scrap tires. For the purpose of this subchapter, a generator shall be a person that accepts whole used or scrap tires for storage, is a fleet operator, or is a whole new or used tire retailer, wholesaler, manufacturer, or retreader.

(b) *Responsibility.* Each generator shall be responsible for ensuring that whole used or scrap tires are transported by a registered transporter. Each generator shall ask the transporter where his whole used or scrap tires are being delivered to, and/or shall designate the destination of the whole used or scrap tires that they generate.

(c) *Generator.* A generator may not place a whole used or scrap tire or split, quartered, or shredded tire pieces in a dumpster for pickup by a collection vehicle that has an enclosed packer unit attached or that is used on a routine and/or regular collection route. All whole used or scrap tires and shredded tire pieces transported from a generator's location shall be trans-

ported and manifested in a separate, identifiable load.

§330.806. *Generator Registration.* Tire generators that regularly dispose of whole used or scrap tires shall obtain a registration number from the executive director. The generator must contact the executive director, identify himself/herself or his/her business as a whole used or scrap tire generator, provide the business name, mailing address, street address, or location, and the city and/or county in which he/she is located. Registration numbers will be issued for each separate business location. The recipient of a registration number shall promptly notify the executive director of any changes to generator information contained in commission records.

§330.807. *Generator Record Keeping.*

(a) *Maintenance of records.* Copies of manifests, daily logs, or other documentation used to support activities related to the accumulation, handling, and shipment of whole used or scrap tires shall be retained by the generator for a period of three years. All such records shall be made available to the executive director upon request.

(b) *Manifest.* Generators shall initiate and maintain a record of each individual load of whole used or scrap tires hauled off-site from their business location. The record shall be in the form of a four-part manifest or other similar documentation approved by the executive director. The manifest shall include the:

(1) name and address of the person who generated the whole or scrap tires or the shredded tire pieces and the type of generator;

(2) name and commission registration number of the transporter;

(3) date of the off-site shipment;

(4) generator registration number;

(5) number of whole used or scrap tires or the weight in pounds of shredded tire pieces collected for transportation;

(6) name of responsible person(s) collecting, transporting, processing and storing the whole used or scrap tires or the shredded tire pieces;

(7) date and place where the whole used or scrap tires or the shredded tire pieces were stored;

(8) registration number, location, and operator of the facility where the whole used or scrap tires or shredded tire pieces were stored;

(9) name of the person acknowledging receipt of the off-site shipment of

whole used or scrap tires, and the number received, or the shredded tire pieces and the weight received;

(10) the location of the generator's site; and

(11) a signature of the representative of the generator, transporter, processor and storage facility acknowledging that the information on the manifest is true and correct.

(c) Generator's log. Any whole used or scrap tire generator shall maintain a log showing the date, number, and method of transporting the whole used or scrap tires off-site. The generator shall retain this log for a period of three years and the log shall be available to the executive director upon request.

§330.808. On Site Storage.

(a) Generators of whole used or scrap tires may store those same tires at the location where they are generated for a period not greater than 90 days. Whole used or scrap tires stored at the generator's site must be transported off-site within 90 days of their accumulation. Tires stored out of doors in an uncontrolled pile shall be monitored for vectors, and appropriate vector control measures shall be utilized at least once every two weeks.

(b) Whole used or scrap tires stored at a generator's location may be collected in a transportable collection container that is mobile, completely enclosed, and lockable. The entire container shall be hauled from the site by a registered transporter, taken to a permitted or registered tire processing or storage facility, and be manifested.

(c) Retailers and wholesalers who sell whole used or scrap tires as a commodity shall do so only from stock that has been sorted, marked, classified, and arranged in an organized manner for sale to the consumer. Used tires that are to be resold as commodities, but are not handled as described in this subsection, shall be considered as stockpiled whole used or scrap tires and the site shall be subject to registration as a waste tire storage facility, if the number of whole used or scrap tires exceeds 500.

§330.809. Transportation Requirements.

(a) A generator may designate the destination of all whole used or scrap tires generated at his/her location and initiate the required manifest for each shipment.

(b) A generator may transport his/her own whole used or scrap tires, provided a tire transporter registration has been obtained from the executive director. Generators who do not transport their own tires shall only use a tire transporter who is registered by the executive director.

(c) A waste tire transporter or a mobile tire processor shall not charge a fee on or after April 1, 1992, to the wholesale or retail dealer for collecting whole used or scrap tires for delivery to a waste tire facility or for collecting or shredding whole used or scrap tires accepted for temporary storage. This prohibition does not apply to the transportation of whole used or scrap tires classified as reusable under §330.808(c) of this title (relating to On Site Storage). This prohibition also does not apply to manufacturers, retreaders, fleet operators, and storage site owners or operators of whole used or scrap tires.

(d) Used or defective tires shipped back to the manufacturer or manufacturer's representative for adjustment are not required to be transported by a registered transporter, provided the generator retains, for a period of three years, written records of the shipments, indicating the date of shipment and the number of tires in each shipment. These records shall be available to the executive director upon request.

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, generators may use such controls and records to satisfy the commission's requirements under this section, with approval by the executive director.

§330.810. Penalties for Generators. A generator that violates the requirements of this subchapter shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.811. Transporters of Whole Used or Scrap Tires.

(a) Applicability. The regulations contained in these sections establish standards applicable to transporters collecting and hauling whole used or scrap tires. Methods of transportation shall include, but are not limited to, measures utilizing roadway, rail, and water facilities. These sections are applicable to waste tire transporters and other tire transporters who transport whole used or scrap tires or shredded tire pieces from a registered generator, waste tire facility or mobile tire processor to a recycling facility.

(b) Responsibility. Transporters shall maintain records using a manifest system as provided in §330.815 of this title (relating to Transporter Record Keeping). Each transporter shall be responsible for ensuring that whole used or scrap tires are transported to a waste tire facility, a permitted or registered storage site, a permitted

disposal or monofill site, a whole used or scrap tire recycler, or a retreader.

(c) Prohibition. A transporter may not charge a fee to a retail or wholesale dealer of new tires, for collecting whole used or scrap tires for delivery to a waste tire facility on or after April 1, 1992.

§330.812. Transporter Registration.

(a) Transporters shall register their operations with the executive director. A person shall not transport whole used or scrap tires without registering with the executive director prior to commencing operations. An application for a registration shall be made on a form obtained from the executive director upon request. The following registration information must be provided to the executive director:

(1) the name, address, and telephone number of registrant;

(2) the name, address, and telephone number of partners, corporate officers, and directors;

(3) a description of vehicles to be registered, including:

(A) make, model, and year of vehicles;

(B) vehicle license plate (tag) number including state and year;

(C) name of vehicle owner;

(D) capacity of vehicle;

(E) type of vehicle; and

(4) the anticipated number of tires to be hauled and/or weight of shredded tire pieces to be hauled per month.

(b) Transporters who are registered by the executive director shall maintain a copy of their registration form containing their assigned registration number, at their designated place of business and in each vehicle used to transport whole used or scrap tires.

(c) Registrations shall expire 12 months from the date of issuance. Registrations are required to be renewed annually prior to the expiration date. Applications for renewal must contain the information required in subsection (a) of this section and shall be submitted at least 60 days prior to the expiration date. An application for renewal must be obtained from the executive director.

(d) Transporters shall provide written notice to the executive director, within 15 days of any change to their registration if:

(1) the number of whole used or scrap tires handled or total operation is expanded by 50% over that originally registered;

(2) the office or place of business is relocated; or

(3) the transporter's registered name is changed.

(e) A new registration application shall be submitted, to the executive director within 10 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered transporter is changed. Following the executive director's determination, the old transporter registration number shall be canceled.

(f) Suspension, revocation, or denial of registration procedures are as follows.

(1) The commission may suspend or revoke a registration or deny an initial or renewal registration for:

(A) failure to maintain a complete and accurate record of shipments of tires;

(B) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(C) falsification of waste shipping documents or shipment records;

(D) delivery of whole used or scrap tires to a facility not registered to handle the tires;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit the annual report required in §330.815(b) of this title (relating to Transporter Record Keeping);

(G) failure to pay registration fees pursuant to §330.817 of this title (relating to Transporter Fees);

(H) illegal dumping of whole used or scrap tires; or

(I) collection or transportation of whole used or scrap tires without registration as required in this section.

(2) A transporter registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A transporter registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a transporter shall not transport whole used or scrap tires regulated under this subchapter.

(3) The holder of a transporter registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a transporter registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation, or denial of initial or renewal registration procedures are as follows.

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant.

(B) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the address listed on the application. If the registration is denied, a person shall not collect or transport whole used or scrap tires.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon 1992) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon 1992) and the rules of the commission.

(g) Transport vehicles operated by municipalities, counties, or other governmental entities or agencies which are used to transport whole used or scrap tires removed from public streets, roads or highways, or drainage easements and delivered to a waste tire facility, a waste tire storage site, or a disposal site shall be exempt from registration under this section; however, the load of whole used or scrap tires shall be manifested. To properly manifest these tires, the generator portion of the manifest

form should be completed showing the number of tires hauled, the date, and physical location where the tires were removed from and to.

§330.813. Delivery Requirement. Transporters shall deposit whole used or scrap tires at a waste tire facility, registered or permitted waste tire storage site, or at a disposal site as designated by the generator. Shipments of whole used or scrap tires may not be commingled with any other type of waste material, except for incidental whole used or scrap tires picked up in enclosed packer units.

§330.814. Vehicle and Equipment Sanitation Standards. All vehicles and equipment used for the collection and transportation of whole used or scrap tires shall be constructed, operated, and maintained to prevent loss of whole used or scrap tires during transport and to prevent health nuisances and safety hazards to operating personnel and the public. Collection vehicles and equipment shall be maintained in a sanitary condition to preclude odors and insect breeding. Any vehicle or trailer used to transport whole used or scrap tires shall be identified on both sides and the rear of the vehicle. The identification shall consist of the name and place of business of the transporter and the commission registration number using numbers at least 2 1/2 inches tall. Trailers used to transport whole used or scrap tires shall be either fully enclosed and lockable, or have sidewalls of sufficient height to contain the load and shall be covered with a tarp during transit.

§330.815. Transporter Record Keeping.

(a) Manifest.

(1) Transporters shall maintain a record of each individual collection and delivery in a processing, storage or disposal facility. Such records shall be in the form of a four-part manifest described in §330.807(b) of this title (relating to Generator Record Keeping).

(2) Persons who are not transporters as defined in §330.811(a) of this title (relating to Applicability) may deliver whole used or scrap tires to a registered facility (i.e. waste tire storage site, disposal site, waste tire facility, or mobile tire processor) without a manifest. The waste tire storage site, disposal site, waste tire facility, or other processing facility is authorized to accept these tires in accordance with the conditions specified in this subchapter without a manifest. The waste tire storage site, disposal site, waste tire facility, or mobile tire processor shall maintain a collection log of unmanifested whole used or scrap tires and shall report the amount of these unmanifested tires on the annual summary

report for their facility. This collection log shall be retained for a period of three years and shall be made available to the executive director upon request.

(b) Maintenance of records and reporting. The transporter shall mail to the person who generated the whole used or scrap tires a copy of the portion of the manifest that has been filled out by the transporter. The transporter shall retain a copy of all manifests showing the collection and disposition of the whole used or scrap tires. Manifest copies shall be retained by the transporter for a period of three years and made available to the executive director upon request. Transporters shall submit to the executive director an annual summary of their activities through December 31 of each calendar year showing the number of whole used or scrap tires collected, the disposition of such tires, and the number of whole used or scrap tires delivered to each facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(c) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, transporters may use such controls and records to satisfy the commission's requirement under this section, following review and approval by the executive director.

§330.816. Interstate Transportation. Persons who engage in the transportation of whole used or scrap tires from Texas to other states or countries, or from other states or countries to Texas, or persons who collect or transport whole used or scrap tires in Texas but have their place of business in another state, shall comply with all of the requirements for transporters contained in this subchapter. If such persons also engage in any activity of managing whole used or scrap tires in Texas by storage, processing, or disposal, they shall follow the applicable requirements for operators of such activities. Persons who engage in the transportation of whole used or scrap tires which do not originate or terminate in Texas, are exempt from these regulations, except for §330.814 of this title (relating to Vehicle and Equipment Sanitation Standards).

§330.817. Transporter Fees.

(a) Applicability. Transporters are required to pay an annual registration fee to the executive director based on the total annual number of whole used or scrap tires or shredded tire pieces transported.

(b) Fee amount. The amount of the annual registration fee shall be based upon

the total annual number of whole used or scrap tires or shredded tire pieces transported under each registration. The fee for the first year of operation under a registration shall be based upon an estimate of the total annual number of whole used or scrap tires or shredded tire pieces to be transported. The fee paid for the first year of operation will be adjusted after submission of at least one annual report and one registration renewal, indicating the actual number of whole used or scrap tires or shredded tire pieces transported. An overpayment will be credited to the next year's registration fee. A billing notice for underpayment of the registration fee will be sent to the transporter and payment will be due within 30 days from the date of the notice.

(c) Fee schedule. The fees shall be calculated based on the total number of whole used or scrap tires or shredded tire pieces transported annually. The total weight of shredded tire pieces transported annually shall be converted to number of whole used or scrap tires using a conversion factor of 18.7 pounds per tire. The following schedule shall be used to calculate the fee amount owing to the commission.

(1) For a total annual number transported of 10,000 whole used or scrap tires or less, the fee is \$100.

(2) For a total annual number transported greater than 10,000 whole used or scrap tires but equal to or less than 50,000 used or scrap tires, the fee is \$250.

(3) For a total annual number transported greater than 50,000 whole used or scrap tires but equal to or less than 200,000 used or scrap tires, the fee is \$400.

(4) For a total annual number transported greater than 200,000 whole used or scrap tires, the fee is \$500.

(d) Method of payment. The transporter's annual registration fee shall accompany the applicant's original or renewal registration application and shall be submitted in the form of a check or money order made payable to the Texas Department of Health and delivered or mailed to: Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

§330.818. Penalties for Transporters. A transporter that violates the requirements of this subchapter shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.821. Mobile Tire Processors of Whole Used or Scrap Tires.

(a) Applicability. The regulations

contained in these sections establish standards applicable to mobile tire processors/shredders collecting and shredding whole used or scrap tires. A mobile processor of whole used or scrap tires includes a machine that splits, quarters, or shreds whole tires into two or more pieces.

(b) Responsibility. Each mobile tire processor operating a mobile tire shredder shall be responsible for ensuring that whole used or scrap tires are split, quartered, or shredded and that the tire pieces are transported to a waste tire facility, or a waste tire storage facility, or a recycling facility that will recycle, reuse or recover for energy the tire pieces.

(c) Recycling responsibility. Each mobile tire processor operating a mobile tire shredder that participates in the waste tire recycling program and receives reimbursement from the Waste Tire Recycling Fund (WTRF) shall ensure that the shredded tire pieces that are generated have been delivered to a recycling, reuse, or energy recovery facility in accordance with applicable sections of this subchapter.

(d) Prohibition. Mobile tire processors operating a mobile tire shredder shall not charge a fee, to a retail or wholesale dealer of new tires, for collecting and shredding whole used or scrap tires accepted for temporary storage, on or after April 1, 1992. This prohibition does not apply to the collecting and shredding of whole used or scrap tires received from manufacturers, retreaders, fleet operators, and storage site owners or operators of whole used or scrap tires.

§330.822. Mobile Tire Processor Registration.

(a) Mobile tire processors operating a mobile tire shredder shall register their operations with the executive director, prior to commencing operations. An application for registration shall be made on a form provided by the executive director upon request. The following registration information shall be provided to the executive director:

(1) the name, address, and telephone number of registrant;

(2) the name, address, and telephone number of partners, corporate officers, and directors;

(3) a description of vehicles or equipment to be registered, including the:

(A) make, model, and year of vehicle or equipment;

(B) vehicle license plate (tag) number including state and year, if applicable;

(C) name of vehicle, or equipment owner;

(D) rated capacity of each piece of equipment or vehicle;

(E) type of equipment or vehicle;

(F) area within Texas that shredder will generally operate; and

(4) the anticipated number of whole used or scrap tires to be split, quartered, or shredded per month.

(b) Persons who apply to the executive director for registration and receive the registration shall maintain a copy of the registration form and their assigned registration number at their designated place of business and in each vehicle used to shred whole used or scrap tires.

(c) Registrations shall expire 36 months after the date of issuance. Registrations are required to be renewed prior to the expiration date. Applications for renewal must meet the requirements of subsection (a) of this section and shall be submitted at least 60 days prior to the expiration date. An application for renewal must be obtained from the executive director.

(d) Mobile tire processors shall provide written notice to the executive director within 15 days of any change to their registration if:

(1) the number of whole used or scrap tires handled or total operation has expanded by 50% over that originally registered;

(2) the office or place of business is relocated;

(3) the mobile processor's registered name has changed;

(4) an increase in the amount of mobile tire shredding equipment owned or operated; or

(5) the mobile tire processor's assigned area of operation has changed.

(e) A new registration application shall be submitted, to the commission within 10 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered mobile tire processor/shredder is changed. Following the executive director's determination, the old mobile processor/shredder registration number shall be canceled.

(f) Suspension, revocation, or denial of initial or renewal registration procedures are as follows.

(1) The commission may suspend or revoke a registration or refuse to issue an initial or renewal registration for:

(A) failure to maintain complete and accurate records required under this subchapter;

(B) failure to maintain vehicles in safe working order as evidenced by at least two citations per vehicle from the Texas Department of Public Safety or local traffic law enforcement agencies;

(C) falsification of any record maintained or received by the registrant;

(D) delivery of shredded tire pieces to a facility not registered by the executive director to handle the material;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit the annual report required in §330.825(c) of this title (relating to Mobile Tire Processor Record Keeping);

(G) failure to maintain insurance or provide proof of insurance as required in subsection (g) of this section;

(H) illegal disposal of shredded tire pieces;

(I) collection and/or shredding of whole used and scrap tires without the registration required in subsection (a) of this section;

(J) failure to deliver shredded tire pieces to a recycling, reuse, or energy recovery facility as required in §330.823 of this title (relating to Delivery Requirements);

(K) falsification of any request for reimbursement from the Waste Tire Recycling Fund;

(L) failure to complete the work required to clean-up an entire illegal tire dump; and

(M) failure to account to the executive director for recycling, reuse or energy recovery activities in the required five-year period.

(2) A mobile tire processor's registration shall be suspended for a period of one year; however, depending upon the

seriousness of the offense(s), the time of suspension may be increased or decreased. A mobile tire processor's registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a mobile processor shall not shred whole used or scrap tires regulated under this subchapter.

(3) The holder of a mobile tire processor registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a mobile tire processor's registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation, or denial of initial or renewal registration procedures are as follows.

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed revocation or denial of registration has been sent from the executive director to the last known address of the registrant.

(B) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the address listed on the application. If the registration is denied, a person shall not shred whole used or scrap tires.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon 1992) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon 1992) and the rules of the commission.

(g) Each mobile tire processor shall provide to the executive director the following evidence of financial responsibility in the form of commercial business insurance:

(1) a general liability policy with \$0.5 million per occurrence, \$1.0 million aggregate limit, \$0.5 million personal injury limit, and fire damage provisions; and

(2) a combined, single limit vehicle and equipment liability insurance policy with limits of at least \$1.0 million per accident.

§330.823. Delivery Requirement. Mobile tire processors shall deliver the shredded tire pieces at a waste tire facility, a waste tire storage facility, or at a facility that will recycle, reuse, or recover energy from the shredded tire pieces. The facility accepting delivery shall be permitted or registered by the commission before delivery of the shredded tire pieces can be made.

§330.824. Vehicle and Equipment Requirements.

(a) All vehicles and equipment used for the collection and shredding of whole used or scrap tires shall be constructed, operated, and maintained to prevent public health nuisances and safety hazards to operating personnel and the public. The equipment shall be periodically cleaned to prevent loose materials from being discharged while in transit or in operation.

(b) The mobile tire processor must be equipped with or have access to a scale to weigh the whole used or scrap tires before shredding and the shredded tire pieces immediately after shredding. Any scale used that is not certified by the Texas Department of Agriculture (TDA) shall be supported with documentation as to why the scale cannot be certified and calibration documentation equivalent to the TDA must be provided to the executive director on a regular basis (monthly or quarterly) from the manufacturer of the scale.

(c) The mobile tire shredder must be mounted on wheels or skids. It may not be permanently anchored in a fixed location.

§330.825. Mobile Tire Processor Record Keeping.

(a) Maintenance of records. The mobile tire processor shall maintain copies of all records required by this section for a period of five years. These records shall be made available to the executive director upon request.

(b) Required records. A mobile tire processor shall maintain the following records:

(1) manifests of incoming whole used or scrap tires;

(2) manifests of outgoing whole used or scrap tires, or shredded tire pieces;

(3) a daily log showing the number of tires by classification that are shredded and the weight of the shredded tire pieces;

(4) equipment and vehicle preventive maintenance records;

(5) a daily log showing the activity of the tire shredding equipment or vehicles;

(6) a daily log showing the origin of the tires shredded and the number collected from that location;

(7) the annual report required by the executive director;

(8) a log containing copies of all monthly vouchers submitted to the executive director for reimbursement;

(9) a record of the dates and documentation of calibration by the manufacturer of the scale;

(10) a record showing the destination of shredded tire pieces and the amount by weight hauled to each facility.

(c) Annual report. Mobile tire processors shall submit to the executive director an annual summary of their activities through December 31 of each calendar year showing the number of whole used or scrap tires collected, shredded, the disposition of such tires, and the amount by weight of shredded tire pieces delivered to a waste tire facility, waste tire storage facility or recycling, reuse or energy recovery facility. The report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

§330.826. Operational Requirements for Mobile Tire Processors.

(a) The operator of the mobile shredder shall operate the vehicle and equipment to prevent nuisances and disturbances.

(b) Stockpiles of whole used or scrap tires at the shredder location that are awaiting splitting, quartering, or shredding shall be monitored for vector control and appropriate vector control measures shall be applied at least once every two weeks.

(c) Mobile tire processors may operate at any permitted or registered waste tire storage facility, any permitted municipal solid waste landfill at which whole used or scrap tires are collected, at any priority enforcement list site authorized by the executive director, or on property utilized by generators to accumulate or store their own whole used or scrap tires. Except when operated at a permitted or registered waste tire storage facility, at a municipal solid waste landfill, or at a priority enforcement list site, mobile tire processors may shred only those tires that are under the direct control of the generator on whose site the tire shredder is temporarily located.

§330.827. Eligibility for the Waste Tire Recycling Fund (WTRF).

(a) A mobile tire processor is eligible for reimbursement from the WTRF pro-

vided such processor is in compliance with §§330.871-330.881 of this title (relating to Waste Tire Recycling Program).

(b) Compliance shall also include the following items.

(1) Whole used or scrap tires shall be shredded to a particle size not larger than nine square inches.

(2) The shredded tire pieces shall be delivered to a facility that will recycle, reuse, or recover energy from the particles, or to a waste tire storage facility.

(c) The mobile tire processor must possess a valid registration from the executive director.

(d) All tires shredded for WTRF reimbursement shall have been generated from within the boundaries of Texas.

§330.828. Penalties for Mobile Tire Processors. A mobile tire processor that violates the requirements of this subchapter shall be subject to any commission action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.831. Storage of Whole Used or Scrap Tires or Shredded Tire Pieces.

(a) Applicability. The regulations contained in these sections establish standards applicable to persons that store whole used or scrap tires or shredded tire pieces on any public or privately owned property. Storage of whole used or scrap tires or shredded tire pieces shall be considered as a temporary means of holding such tires or pieces and shall require permitting or registration in accordance with this subchapter. These sections do not apply to the use of tires in the storage, protection, or production of agricultural commodities.

(b) Responsibility.

(1) All persons shall properly register their property with the executive director if the intended use of the property is for the storage of whole used or scrap tires or shredded tire pieces as provided in this subchapter.

(2) Owners and/or operators shall ensure that the tire transporters or processors that deliver whole used or scrap tires or shredded tire pieces at their waste tire facility or mobile tire processor location are properly registered with the executive director as required by §330.812 of this title (relating to Transporter Registration), §330.822 of this title (relating to Mobile Tire Processor Registration) and §330.843 of this title (relating to Waste Tire Facility Registration).

(3) Owners and/or operators shall ensure that the tire transporters or

mobile tire processors or waste tire facilities that deliver whole used or scrap tires or shredded tire pieces at their waste tire storage facility are properly manifested as required by §330.815(a) of this title (relating to Transporter Record Keeping), §330.825 of this title (relating to Mobile Tire Processor Record Keeping) and §330.845 of this title (relating to Waste Tire Facility Record Keeping).

(4) Owners and/or operators of used or scrap tire storage sites shall obtain all required necessary and appropriate state and local permits, licenses, or registrations and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

§330.832. Waste Tire Storage Facility Classification.

(a) Classification of a waste tire storage facility shall be based on the number of whole used or scrap tires stored, the origination of the shredded tire pieces stored, and the type of storage operation.

(b) The executive director shall classify all waste tire storage facilities according to the following.

(1) Type VIII-WT. A Type VIII-WT facility is one in which less than 500 whole used or scrap tires are stored. Storage of whole used or scrap tires at a Type VIII-WT site shall be temporary. Whole used or scrap tires stored at a Type VIII-WT facility must be transported off-site within 90 days following their accumulation.

(2) Type VIII-R. A Type VIII-R facility is one in which more than 500 whole used or scrap tires or an equivalent amount of shredded tire pieces are stored. Storage of whole used or scrap tires shall be temporary. Storage of whole used or scrap tires that are not designated as reusable whole used tires, is limited to 60 days from delivery date. Shredded tire pieces may be stored for a period of 12 months, unless written authorization for a longer storage period has been granted by the executive director because the recycling market cannot accommodate the shredded tire pieces. A Type VIII-R site shall be registered by the executive director.

(3) Type VIII-S. A Type VIII-S site is a tire monofill that contains shredded tire pieces equivalent to or greater than 500 whole used or scrap tires that have been shredded to a particle size of not larger than nine square inches and the mobile tire processor or waste tire facility was reimbursed from the WTRF. Storage at a Type VIII-S site shall be considered long term and shall require a permit from the Texas Water Commission.

(4) Type VIII-I. A Type VIII-I is a waste tire storage facility that stores more than 500 whole used or scrap tires and

is considered by the executive director as an illegal tire site. These types of facilities shall be handled through the Priority Enforcement List (PEL) and routine inspection and enforcement activities.

(5) Type VIII-L. A Type VIII-L is a designated recycling collection area at a permitted municipal solid waste landfill. Whole used or scrap tires may be stored at a Type VIII-L facility for a period of 120 days from delivery.

§330.833. Waste Tire Storage Facility Registration.

(a) Persons who store whole used or scrap tires or shredded tire pieces shall be required to obtain a waste tire storage registration number from the executive director. Generators, with the exception of waste tire storage facilities, that temporarily accumulate whole used or scrap tires for delivery to a waste tire storage facility, or a mobile tire processor, or waste tire facility are exempt from obtaining a waste tire storage facility registration number from the executive director.

(b) An application for a waste tire storage facility registration number shall be made to the executive director on a form provided by the executive director. The following information shall be provided to the executive director:

(1) the name, mailing address, and telephone number of the property owner of the waste tire storage facility;

(2) the street location of the waste tire storage facility including county;

(3) the name, mailing address, and telephone number of person making the application;

(4) the approximate number of tires that will be stored at the waste tire storage facility; and

(5) the existing land use surrounding the waste tire storage facility.

(c) The application for a waste tire storage facility registration number shall be made to the executive director in writing. The written application must be made on the form provided by the executive director. The waste tire storage facility registration number shall be issued upon receipt and approval of an administratively and technically complete application.

(d) Waste tire storage facilities that have received a registration number and have been classified pursuant to §330.832(b) of this title (relating to Waste Tire Storage Facility Classification) shall be subject to the specific requirements of this subchapter.

§330.834. Evidence of Financial Responsibility.

(a) The applicant seeking registration for a Type VIII-R storage facility or a permit for a Type VIII-S storage facility shall submit evidence of financial responsibility in an amount deemed adequate by the executive director to assure the executive director that the owner or operator of the waste tire storage facility has sufficient assets to provide proper clean-up and closure of the facility. A firm commitment to provide back-up equipment by lease, purchase, or diversion from other activities is part of this responsibility. This assurance may be in the form of a performance bond, a letter of credit from a recognized financial institution, a trust fund, or insurance in the case of privately-owned facilities, or by commissioners' court or city council resolution in the case of publicly-owned facilities.

(b) The financial assurance shall be submitted to the executive director within 30 days prior to the issuance of a registration or a permit. It shall be good for one year beginning with the date of registration or permit issuance. The financial assurance must be renewed annually and shall be submitted at least 60 days prior to the expiration date.

(c) The applicant shall submit, with the application for a permit or registration, an estimate of the total amount by weight of shredded tire pieces that the facility will store or process, and an estimated number of whole used or scrap tires that will be stored at the waste tire storage facility during processing. The applicant shall also estimate the cost of cleaning up and closing the facility, using the total amounts of whole used or scrap tires or shredded tire pieces stored at the facility. The executive director will evaluate the estimate submitted and determine the amount of financial assurance that each facility is required to provide.

§330.835. Requirements for a Type VIII-R Waste Tire Storage Facility.

(a) Registration requirements.

(1) Persons who store or intend to store more than 500 whole used or scrap tires and/or an equivalent amount of shredded tire pieces shall register these sites with the executive director. Registration forms shall be provided by the executive director upon request.

(2) Persons who apply and receive Type VIII-R facility registration from the executive director shall maintain a copy of the registration at their designated place of business and at the designated storage facility location.

(3) A Type VIII-R registration shall expire 36 months from the date of issuance. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days

prior to the expiration date of the Type VIII-R storage facility registration.

(4) Type VIII-R storage facility owners and/or operators shall provide written notification to the commission within 15 days of a change to their registration if:

(A) any data submitted in support of the application for registration has changed;

(B) the office or place of business is relocated; or

(C) the registered name of the facility owner or operator has changed.

(5) A new Type VIII-R storage facility registration application shall be submitted to the executive director within 10 days, of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered Type VII-R storage facility has changed or the operator of a Type VII-R storage facility has changed. Following the executive director's determination, the old Type VII-R storage facility registration number shall be canceled.

(6) The commission shall suspend or revoke a Type VIII-R storage facility registration or deny an initial or renewal application for registration for cause as provided in §330.840 of this title (relating to Penalties for Owner or Operator of Waste Tire Storage Facilities). An opportunity for a formal hearing on the suspension or revocation may be requested by the registrant within 20 days after a notice of suspension or revocation has been sent from the executive director to the last known address of the registrant. If the registration is suspended or revoked, a Type VIII-R storage facility shall not store whole used or scrap tires or shredded tire pieces regulated under this subchapter. Upon suspension or revocation of a Type VIII-R storage facility registration, the owner or operator of the facility shall remove all whole used or scrap tires or shredded tire pieces stored at the facility within 60 days from the date of suspension or revocation.

(7) Preparation and submission of an application for a Type VIII-R storage facility shall be in accordance with the following procedures.

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director. The application shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated so that

the health, welfare, and physical property of the public as well as the environment and endangered species are protected. Failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director. The submission of false information shall constitute grounds for denial of the initial or renewal application or suspension or revocation of the current Type VIII-R storage facility registration.

(B) The application for a registration of a Type VIII-R storage facility shall be submitted in triplicate to the executive director with all supporting data unless otherwise directed by the executive director. Following receipt of the application, the executive director will forward to the applicant a letter acknowledging receipt of the application.

(C) Data presented in support of an initial or renewal application for a Type VIII-R storage facility shall consist of:

(i) the legal name and address of the individual, partnership, corporation, city, county or other governmental entity that is applying for the registration and will be responsible for operations at the Type VIII-R storage facility;

(ii) the legal name and address of landowner where the Type VIII-R storage facility will be or is currently located;

(iii) the current status of the Type VIII-R storage facility; (i.e. proposed or existing);

(iv) the specific location of the Type VIII-R storage facility by street address if within the city limits or distance and direction from a city corporate limits or road intersection. The Type VIII-R storage facility location shall be further described by giving the direction (using compass headings as N, NE, E, etc.) and distance measured perpendicularly (in feet or miles), unless otherwise noted, from each Type VIII-R storage facility boundary to a known physical feature (such as a road, highway, canal, creek, etc.);

(v) the location of the Type VIII-R storage facility by county, or extraterritorial jurisdiction of a city;

(vi) the estimated number of whole used or scrap tires or shredded tire pieces to be received daily;

(vii) the size of the Type VIII-R storage facility in acres;

(viii) the maximum number of whole used or scrap tires or shredded tire pieces to be stored at the Type VIII-R storage facility;

(ix) the intended purpose of the whole used or scrap tires or shredded tires pieces stored at the Type VIII-R storage facility;

(x) the time period that the whole used or scrap tires or shredded tire pieces will be stored at the Type VIII-R storage facility;

(xi) the storage method (tire pile or inside a building or enclosure);

(xii) a topographic map which shall be a United States Geological Survey 7-1/2 minute quadrangle sheet or equivalent, encompassing the area of the site and showing the location of area streams (particularly those entering and leaving the site), and marked to show the Type VIII-R storage facility boundaries, and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey Federal Center, Denver, Colorado 80225;

(xiii) a general location map, which shall be all or a portion of a half-scale county map, prepared by the Texas Department of Transportation Attention: Transportation Planning Division, annotated as necessary to show the location of the Type VIII-R storage facility; prevailing wind direction; residences, cemeteries, and recreational areas within one mile of the Type VIII-R storage facility and location and type of surface of all roads within one mile which will be used for entering or leaving the Type VIII-R storage facility. If only a portion of the map sheet is used, the portion shall include scale, date, north arrow, and two or more latitudes and longitudes. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation Attention: Transportation Planning Division (D-10), P.O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(xiv) a statement from the property owner substantially equivalent to §330.905 of this title (relating to Appendix E-Form for Property Owner Affidavit) shall be submitted when the applicant is not a city, county, state agency, federal agency, or other governmental entity and is not the owner of record of the land described in the application, or does not have an option to buy the land. The statement shall be witnessed and notarized. If the property owner does not sign the statement, the applicant shall provide the executive director with documentation that the property owner has been properly notified and advised of his/her responsibilities and potential liabilities in relation to the operation of a Type VIII-R waste tire storage facility on the owner's land;

(xv) a Type VIII-R storage facility layout plan showing location of storage areas, fire lanes, access roads (internal and external), fire control facilities, facility security and fencing, maintenance and control buildings, sanitation facilities, location and description of type of tire splitter to be used, and other operational buildings to be located on the Type VIII-R storage facility;

(xvi) a drainage plan showing drainage flow throughout the Type VIII-R storage facility area; locations of streams; and any other important drainage feature of the facility. Any additional surface drainage controls that are necessary shall be designed by a professional engineer in accordance with §330.65(b)(5)(iii) and (v) of this title (relating to Technical Information Required for Landfill Sites Serving 5,000 Persons or More-Site Development Plan). If during review of the application or after issuance of the registration, a detailed drainage plan is required, then it shall be prepared, signed, and sealed by a professional engineer in accordance with §330.58 of this title (relating to Preparation of Application);

(xvii) a legal description of the Type VIII-R storage facility consisting of the official metes and bounds description including the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application;

(xviii) a Type VIII-R storage facility operating plan containing information outlined in subsection (c) of this section; and

(xix) an applicant's statement provided by the applicant, or the authorized representative empowered to make commitments for the applicant, that he is familiar with the application and all supporting data and is aware of all commitments represented in the application and that he/she is also familiar with all pertinent requirements in these regulations and he/she agrees to develop and operate the Type VIII-R storage facility in accordance with the application, the sections in this subchapter, and any special provisions that may be imposed by the executive director.

(b) Design requirements for Type VIII-R Waste Tire Storage Facility.

(1) A Type VIII-R waste tire storage facility shall be designed or registered so that the health, welfare and safety of operators, transporters, and others who may utilize the Type VIII-R waste tire storage facility is maintained.

(2) Whole used or scrap tires or shredded tire pieces may be stored using tire piles, inside storage, or a combination of both methods.

(A) Tire piles consisting of whole used or scrap tires or shredded tire pieces shall be no greater than 15 feet in height nor shall the pile cover an area greater than 8,000 square feet.

(B) Whole used or scrap tires or shredded tire pieces may be stored in any enclosed building or other type of covered enclosure. Where applicable, local fire prevention codes must be met and appropriate precautions taken. Inside storage piles or bins shall not exceed 12,000 cubic feet with a 10 foot aisle space between piles or bins. Storage trailers will be allowed provided the trailer is completely enclosed and lockable.

(3) Tire piles consisting of whole used or scrap tire or shredded tire pieces stored outside of areas with building setback lines shall not be within 50 feet of a property line, building, or other structure; and 25 feet from either boundary of an easement. Outside piles consisting of whole used or scrap tire or shredded tire pieces and buildings used to store whole used or scrap tires or shredded tire pieces in areas with building setback lines shall be maintained no closer than 10 feet to the applicable building setback lines. Where no building setback lines exist, buildings used to store used or scrap tires or shredded tire pieces shall not be within 25 feet of the property line of the Type VIII-R storage facility.

(4) Whole used or scrap tires shall be split, quartered, or shredded within 60 days from the date of delivery to the Type VIII-R storage facility. Appropriate vector controls shall be made at a frequency based upon weather conditions and other applicable local ordinances.

(5) There shall be a minimum separation of 20 feet between outside tire piles consisting of whole used or scrap tires or shredded tire pieces. This 20-foot space shall be designated as a fire lane and shall be an all-weather road. The open space between inside and outside tire piles consisting of whole used or scrap tires or shredded tire pieces shall be kept open at all times and maintained free of rubbish, equipment, tires, or other materials.

(6) The Type VIII-R storage facility shall be completely enclosed with a chain-link type security fence at least six feet in height with lockable gates. Storage buildings or enclosures not enclosed with a chain-link type security fence shall be secured by lockable doors. Waste tire storage facilities shall be kept locked during all non-operational hours.

(7) The Type VIII-R storage facility shall have adequate fire protection using fire hydrants or a firewater storage

pond or tank at the facility and large capacity carbon dioxide or dry chemical fire extinguisher(s) located in strategically-placed enclosures throughout the entire site. Fire extinguishers used at waste tire storage facilities with inside and outside storage, should be equally spaced within the facility to provide quick access from any location within the facility. The minimum spacing between fire extinguishers, inside and outside, shall be 100 feet. The minimum number of fire extinguishers or fire hydrants for each waste tire storage facility shall be one per acre. The capacity of a firewater storage pond or tank shall be of sufficient size for firefighting purposes and shall be in conformance with all local and state fire code requirements.

(8) If required, suitable drainage structures or features shall be provided to divert the flow of rainfall run-off or other surface water within the Type VIII-R storage facility.

(9) Each site shall conspicuously display at the entrance a sign at least 1 1/2 feet by 2 1/2 feet with clear, legible letters stating the name of the Type VIII-R storage facility using the words "waste tire storage facility", the registration number, and operating hours.

(10) A Type VIII-R storage facility located within a designated floodplain area shall provide adequate protection levees or dikes to prevent washout from any material stored material within the Type VIII-R storage facility.

(11) The Type VIII-R storage facility shall be designed in accordance with all local building codes, fire codes, or other appropriate local codes.

(c) Type VIII-R Waste Tire Storage Facility Operating Plan.

(1) The purpose of the Type VIII-R storage facility operating plan is to provide specific guidance and instructions to Type VIII-R storage facility management and operating personnel in sufficient detail to enable them to conduct day-to-day operation in a manner consistent with the design of the Type VIII-R storage facility and the requirements imposed in this subchapter.

(2) The Type VIII-R storage facility operating plan shall include guidance or instructions on the following:

(A) security, facility access control, the hours and days during which tire-hauling vehicles will be accepted, traffic control, and safety;

(B) sequence of the development of the Type VIII-R storage facility such as utilization of storage areas, drainage features, firewater storage ponds, trenches, and buildings;

(C) control of loading and unloading of whole used or scrap tires or shredded tire pieces within designated areas so as to minimize operational problems at the Type VIII-R storage facility;

(D) fire prevention and control plans, and special training requirements for fire-fighting personnel that may be called for assistance;

(E) vector control procedures for any type of vector that may be found at the Type VIII-R storage facility;

(F) a procedure for removal of any waste material that is not a whole used or scrap tire or shredded tire piece to a disposal facility permitted by the commission. This procedure must include the means to be used for removal of the waste material illegally deposited at the Type VIII-R storage facility. In all cases, such waste shall be removed from the storage area immediately and placed in suitable collection bins or be returned to the transporter's vehicle and removed from the Type VIII-R storage facility. Collection bins must be emptied at least weekly, depending on the amount and type of unauthorized waste. The equipment necessary to meet this objective shall be specified in the design requirements and shall be on site and operable during operating hours;

(G) a facility employee shall be designated by the owner or operator to inspect each load of whole used or scrap tires or shredded tire pieces that is delivered to the Type VIII-R storage facility. The employee shall have the authority and responsibility to reject unauthorized loads, have unauthorized materials removed by the transporter, assess appropriate disposal fees, and have any unauthorized material removed by on-site personnel. The name of the designated employee shall be provided to the executive director by the owner or operator of the facility;

(H) a procedure whereby the transporter manifest required by §330.815 of this title (relating to Transporter Record Keeping), daily log and other required documents shall be maintained at the Type VIII-R storage facility for a period of three years and be available for inspection the executive director or authorized agents or employees of local governments having jurisdiction;

(I) dust and mud control measures for access roads, fire lanes, and storage areas within the Type VIII-R storage facility;

(J) posting of signs and enforcement of Type VIII-R storage facility rules;

(K) wet-weather operations;

(L) preventive maintenance procedures for all storage areas, tire splitter equipment, fire lanes, fire control devices, drainage facilities, access roads, buildings, and other structures on the Type VIII-R storage facility during the active operating period of the Type VIII-R storage facility. A schedule shall be established for periodic inspection of all equipment and facilities to determine if unsatisfactory conditions exist; and

(M) incorporation of other instructions as necessary to ensure that the Type VIII-R storage facility personnel comply with all of the operational standards for the facility.

(d) Type VIII-R Waste Tire Storage Facility Record Keeping.

(1) General requirements.

(A) The executive director approved Type VIII-R storage facility layout plan, Type VIII-R storage facility operating plan, and all supporting data to the application, is an operational requirement. Any significant deviation as determined by the executive director, from any part of the site layout plan or operating plan or other supporting data without prior approval from the executive director shall be a violation of this subchapter.

(B) A copy of the registration with all supporting data, including the approved Type VIII-R storage facility layout plan, the approved Type VIII-R storage facility operating plan, and the commission's current rules shall be on-site at all times. The facility supervisor shall be knowledgeable of current commission rules and contents of the approved Type VIII-R storage facility application in relation to the operational requirements of the specific Type VIII-R storage facility.

(C) All drawings or other sheets prepared for revisions to a Type VIII-R storage facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(2) Daily log. Persons that store whole used or scrap tires or shredded tire pieces subject to control under this subchapter shall maintain a record of each individual delivery and removal. Such re-

cord shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include at a minimum, the:

(A) name and commission registration number of the waste tire storage facility;

(B) physical address of the Type VIII-R storage facility;

(C) number of whole used or scrap tires or shredded tire pieces received at the Type VIII-R storage facility;

(D) number of whole used or scrap tires or shredded tire pieces, removed from the Type VIII-R storage facility (for disposal, resale, recycling, reuse or energy recovery);

(E) specific location in the Type VIII-R storage facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires or shredded tire pieces are delivered or removed for disposal, resale, recycling, reuse or energy recovery);

(F) description of specific events or occurrences at the Type VIII-R storage facility relating to routine maintenance, fires, theft, spraying for vectors, observations of vectors or evidence of vectors, or other similar events or occurrences;

(G) number of whole used or scrap tires being held for resale, adjustments, or other purposes; and

(H) name and signature of facility representative acknowledging truth and accuracy of the daily log.

(3) Transporter manifests. The Type VIII-R storage facility operator shall retain a copy of all manifests received from a tire transporter, whether the manifest is for whole used or scrap tires delivered to the Type VIII-R storage facility or removed from the Type VIII-R storage facility.

(4) Maintenance of records and reporting. The Type VIII-R storage facility operator shall retain a copy of all records showing the collection and disposition of the whole used or scrap tires or shredded tire pieces. Such copies shall be retained for three years and made available to the commission upon request. Type VIII-R storage facility operators shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number of whole used or scrap tires or shredded tire pieces delivered, the

disposition of whole used or scrap tires or shredded tire pieces, and the number of whole used or scrap tires or shredded tire pieces removed from the facility. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The annual report shall be prepared on a form provided by the executive director.

(5) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, waste tire storage facility operators shall use such controls and records to satisfy the commission's requirements, upon review and approval by the executive director.

§330.836. Requirements for a Type VIII-S Waste Tire Storage Facility.

(a) Permit requirement.

(1) Persons that intend to store shredded tire pieces that were shredded to a particle size no larger than nine square inches and were received from a waste tire facility or mobile tire processor reimbursed from the WTRF in a below ground facility or tire monofill shall permit these sites with the commission. The below ground facility permitted to store shredded tire pieces shall only receive and store shredded tire pieces nine square inches and smaller. Permit application forms will be provided by the executive director.

(2) Persons that apply and receive a permit from the commission shall maintain a copy of the permit at their designated place of business and at the designated Type VIII-S storage facility location.

(3) A permit issued for a Type VIII-S waste tire storage facility shall expire 60 months from the date of issuance. An application for renewal shall be submitted at least 12 months prior to the expiration date. If the market for recycling, reuse, or energy recovery has not developed sufficiently to absorb the shredded tire pieces stored in the monofill, the commission may reissue the permit for an additional 60 months. Failure to provide an end user for the shredded tire pieces by the 54th month after the renewal of the permit, shall be sufficient grounds for the commission to revoke the permit and claim the financial assurance for facility clean-up and closure.

(4) Preparation and submission of the permit application shall be in accordance with the requirements of a Type VIII-S Tire Monofill indicated in §330.832 of this title (related to Waste Tire Storage Facility Classification).

(b) Design requirements for a Type VIII-S waste tire storage facility.

(1) A tire storage monofill shall be designed and permitted so that the health, welfare, and safety of the VIII-

S storage facility operators, transporters, and others that may utilize the Type VIII-S storage facility is maintained.

(2) The Type VIII-S storage facility shall be designed in accordance with the requirements of §330.853 of this title (relating to Permit Requirements).

(c) Type VIII-S waste tire storage facility operation.

(1) The purpose of the Type VIII-S storage facility operating plan is to provide specific guidance and instructions to the Type VIII-S storage facility management and operating personnel in sufficient detail to enable them to conduct day-to-day operation in a manner consistent with the design of the Type VIII-S storage facility and the requirements of this subchapter.

(2) The Type VII-S storage facility operating plan shall be prepared in accordance with the requirements of §330.853 of this title (relating to Permit Requirements).

(3) The Type VIII-S storage facility operating plan shall also include an operational procedure for the extraction or exhumation of the shredded tire pieces that will be transported for recycling, reuse, or energy recovery.

(4) Record keeping and maintenance requirements for a Type VIII-S waste tire storage facility (tire monofill) shall be the same as those required in §330.835(d) of this title (relating to Requirements for a Type VIII-R Waste Tire Storage Facility.)

§330.837. Requirements for a Type VIII-L Waste Tire Storage Facility.

(a) Permitted municipal solid waste landfills that elect to designate a recycling collection area for the collection and storage of whole used or scrap tires may do so. The designated recycling collection area shall be issued a Type VIII-L waste tire storage facility registration number from the executive director and allowed to accumulate whole used or scrap tires for a period not to exceed 90 days.

(b) To receive a waste tire storage facility registration number for the recycling collection area, the permittee shall submit to the executive director, in triplicate, a change to their previously approved Site Development Plan designating the collection area. In addition, a metes and bounds description of the designated recycling collection area shall be submitted.

(c) The designated recycling collection area shall be a permanent fixed area within the permitted facility. Lockable enclosed trailers, open top roll off boxes, or tire piles may be utilized in the collection and storage of these tires. The method of operation of the recycling collection area

shall be identified in the changes to the Site Development Plan as required in §330.837(b) of this title (relating to a Type VII-L Waste Tire Storage Facility).

§330.838. Requirements for a Type VIII-WT Waste Tire Storage Facility.

(a) Persons that intend to store whole used or scrap tires in quantities less than 500 at any given time may do so without obtaining a permit or registration from the commission. The executive director will assign a Type VIII-WT registration number to the storage facility.

(b) Persons who operate a Type VIII-WT storage facility shall monitor the facility for vectors and shall utilize a vector control system to control the presence and occurrence of vectors.

(c) Whole used or scrap tires stored in a Type VIII-WT storage facility shall be removed at least once every 120 days or when the accumulated number of whole used or scrap tires nears the 500 limit.

§330.839. Eligibility for the Waste Tire Recycling Fund (WTRF) Program.

(a) Any waste tire storage facility declared by the executive director to be eligible for the WTRF shall operate in accordance with any additional requirements imposed in §330.866 of this title (relating to Post PEL Clean-Up Responsibilities).

(b) Eligibility of the waste tire storage facility for inclusion in the WTRF program shall be determined as follows.

(1) Any waste tire storage facility that has not received a waste tire storage facility commission permit or registration number from the executive director and has not been classified by the executive director is not eligible for participation in the WTRF program.

(2) The WTRF program targets clean-up of illegal tire sites and shredding of whole used or scrap tires generated on a daily basis from retail or wholesale dealers. Waste tire storage facilities that have received a waste tire storage facility registration number and have been classified by the executive director are eligible for participation in the WTRF program under the appropriate classification category.

(3) The following waste tire storage facilities are eligible for participation in the WTRF program:

(A) clean up of illegal tire sites;

(i) Type VIII-I sites; and
(ii) Type VIII-WT sites that are above the PEL threshold limit; and

(B) whole used or scrap tires generated daily at:

(i) Type VIII-L sites;

(ii) Type VIII-WT sites that are below the PEL threshold limit; and

(iii) Type VIII-R sites.

§330.840. Penalties for Owner or Operator of Waste Tire Storage Facilities. An owner or operator of a waste tire storage facility that violates the requirements of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.841. Waste Tire Facility Processors of Whole Used or Scrap Tires.

(a) **Applicability.** The regulations contained in these sections establish standards applicable to persons who operate as a waste tire processor at a waste tire facility. A waste tire facility is a fixed and permanent facility.

(b) **Responsibility.** All persons who operate as a waste tire processor at a waste tire facility shall be responsible for obtaining all necessary and appropriate state and local permits, licenses, or registrations required, and operate in compliance with such permits, licenses, or registrations, or other applicable state and local codes.

(c) **Recycling responsibility.** Each waste tire facility that participates in the WTRF program and receives reimbursement from the WTRF shall be responsible for ensuring that the shredded tire pieces generated at the waste tire facility have been delivered to a recycling, reuse, or energy recovery facility in accordance with applicable sections of this subchapter.

(d) **WTRF program.** Waste tire facilities that participate in the WTRF program shall not charge a fee to retail or wholesale dealers (generators of whole used or new tires) for collecting and shredding whole used or scrap tires that have accumulated in Type VIII-WT waste tire storage facilities at generator locations on or after April 1, 1992.

§330.842. Waste Tire Facility Classification and Operation.

(a) A waste tire facility shall be classified as a Type VIII-P facility. The facility shall contain equipment that will shred whole used tires or scrap tires and/or reduce the whole used or scrap tire into a particle size of nine square inches or less.

(b) A Type VIII-P site shall be op-

erated in accordance with the provisions in Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) and the provisions contained in this subchapter.

(c) Waste tire shredding or reduction equipment shall be equipped with or have access to a scale that is either certified annually by the weights and measures section of the Texas Department of Agriculture (TDA) or certified on a routine basis (i.e., quarterly or monthly) by the manufacturer that developed and installed the scale. All whole used or scrap tires or shredded tire pieces shall be weighed immediately after processing. Any scale that is not certified by the TDA shall be supported with documentation as to why it cannot be certified by TDA and calibration documentation equivalent to the TDA must be obtained from the manufacturer of the scale.

§330.843. Waste Tire Facility Registration.

(a) Persons that process whole used or scrap tires at a waste tire facility shall obtain a registration number from the executive director for the operation of the waste tire facility. This registration number requirement is only applicable to waste tire facilities that have permanent and fixed equipment used to shred or reduce whole used or scrap tires to a particle size of nine square inches or less. Permanent fixed tire splitting or quartering equipment, some shredding equipment, and recyclers who have processes incapable of reducing whole used or scrap tires to a particle size of nine square inches or less, are not required to be registered, and are not eligible for reimbursement from the WTRF.

(b) Waste tire facilities shall register their operation with the executive director prior to commencing operations. An application for registration shall be made on a form provided by the executive director upon request. The following registration information must be provided to the executive director:

(1) the name, address, and telephone number of registrant;

(2) the name, address, and telephone number of partners, corporate officers, and directors;

(3) a description of the vehicles or equipment to be registered, including the:

(A) make, model, and year of the vehicle or equipment;

(B) name of the vehicle or equipment owner;

(C) vehicle license plate (tag number) including state and year, if applicable;

(D) rated capacity of each piece of equipment or vehicle;

(E) type of equipment or vehicle; and

(F) area within Texas that the permanent shredding equipment shredder will be located and will generally operate;

(4) the anticipated number of whole used or scrap tires to be split, quartered, or shredded per month; and

(5) a metes and bounds description of the site location of the facility.

(c) Persons who apply to the executive director for registration and receive the registration shall maintain a copy of the registration form and their assigned registration number at their designated place of business and in each vehicle used to transport whole used or scrap tires to their waste tire facility.

(d) A waste tire facility registration shall expire 60 months after the date of issuance. A waste tire facility registration is required to be renewed prior to the expiration date. Applications for renewal of registration must meet the requirements of subsection (b) of this section and shall be submitted at least 60 days prior to the expiration date. An application for renewal of registration must be obtained from the executive director.

(e) A waste tire facility shall provide written notice to the executive director within 15 days of any change to the registration if:

(1) the number of whole used or scrap tires handled or total waste tire facility operation has expanded by 50% over that originally registered;

(2) the office or place of business is relocated;

(3) the registered name of the waste tire facility has changed;

(4) the amount of tire shredding equipment has increased; or

(5) the assigned area of shredder operation has changed.

(f) A new registration application shall be submitted, to the executive director within 10 days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered waste tire facility has changed or the location of the equipment or facility has changed. Following the executive director's determination, the old waste tire facility registration number shall be canceled.

(g) Suspension, revocation, or denial of initial or renewal registration procedures are as follows.

(1) The commission may suspend or revoke a registration, or deny the issuance of an initial or renewal registration for:

(A) failure to maintain complete and accurate records pursuant to §330.845 of this title (relating to Waste Tire Facility Record Keeping);

(B) failure to maintain equipment in safe working order;

(C) falsification of any record maintained or received by the registrant;

(D) delivery of shredded tire pieces to a facility not registered by the executive director to handle the material;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit annual reports as required by §330.845(d) of this title (relating to Waste Tire Facility Record Keeping);

(G) failure to maintain financial assurance as required in §330.844 of this title (relating to Evidence of Financial Responsibility);

(H) illegal disposal of shredded tire pieces;

(I) collection and/or shredding of used and scrap tires without registration as required in §330.843 of this title (relating to Waste Tire Facility Registration);

(J) failure to deliver shredded tire pieces to a recycling, reuse, or energy recovery facility as required in §330.841(c) of this title (relating to Applicability and Responsibility);

(K) falsification of any request for reimbursement from the WTRF;

(L) failure to complete the work required to clean up an illegal whole used or scrap tire site; and

(M) failure to account to the executive director for recycling, reuse, or

energy recovery activities in the required five year period.

(2) A waste tire facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A waste tire facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a waste tire facility shall not shred any whole used or scrap tires regulated under this subchapter.

(3) The holder of a waste tire facility registration that has been revoked by the commission may reapply for registration pursuant to this subchapter as if applying for the first time, after a period of at least one year from the date of revocation. If a waste tire facility registration is revoked by the commission a second time, the revocation shall be permanent.

(4) Appeal of suspension, revocation, or denial of initial or renewal registration procedures are as follows.

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the registrant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation or denial of the initial or renewal registration has been sent from the executive director to the last known address of the registrant.

(B) An opportunity for a formal hearing on the denial of initial registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of initial or renewal registration has been sent from the executive director to the address listed on the application. If the registration is denied, a person shall not collect, transport, or process whole used or scrap tires regulated under this subchapter.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Vernon 1992) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon 1992) and the rules of the commission.

§330.844. Evidence of Financial Responsibility.

(a) The applicant for a Type VIII-P registration shall submit evidence of finan-

cial responsibility in an amount adequate to assure the executive director that there is sufficient assets to provide proper cleanup and closure of the facility. A firm commitment to provide back-up equipment by lease, purchase, or diversion from other activities is part of this responsibility. This assurance may be in the form of a performance bond, a letter of credit from a recognized financial institutions, a trust fund, or insurance in the case of privately-owned facilities, or by commissioners court or city council resolution in the case of publicly-owned facilities.

(b) The financial assurance shall be submitted within 30 days prior to the issuance of a registration. It shall be good for one year from the date of issuance of registration. The financial assurance must be renewed annually and shall be submitted at least 60 days prior to the expiration date.

(c) The applicant shall submit, with the application for a registration, an estimate of the total amount, by weight, of shredded tire pieces the waste tire facility will store or process and an estimated number of whole used or scrap tires that will be at the waste tire facility during processing. The applicant shall also estimate the cost of cleaning-up or closing the waste tire facility using the total amount of whole used and scrap tires and shredded tire pieces. The executive director will evaluate the estimate submitted and determine whether the amount of financial assurance calculated by the applicant is adequate to clean-up and properly close the waste tire facility.

§330.845. Waste Tire Facility Record Keeping.

(a) General Requirements.

(1) The executive director approved waste tire facility layout plan, facility operating plan, and all supporting data to the application, is an operational requirement, and any significant deviation from any of the above without prior approval from the executive director is a violation of this subchapter.

(2) A copy of the registration with all supporting data, including the approved waste tire facility layout plan, the approved waste tire facility operating plan, and the commission's current rules shall be on-site at all times. The facility supervisor shall be knowledgeable of current commission rules and the contents of the approved application in relation to the operational requirements of the specific waste tire facility.

(3) All drawings or other sheets prepared for revisions to a waste tire facility layout plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate.

(b) Daily log. Persons who process whole used or scrap tires subject to control under this subchapter shall maintain a record of each individual delivery, processing, and removal. Such record shall be in the form of a daily log or other similar documentation approved by the executive director. The daily log shall include at a minimum:

(1) the name and commission registration number of the waste tire facility;

(2) the physical address of the waste tire facility storage site;

(3) the total number of whole used or scrap tires received at the waste tire facility from illegal tire sites and other generators, listed separately;

(4) the total number of whole used or scrap tires shredded or processed, and the amount of by weight of shredded tire pieces;

(5) the amount of shredded tire pieces removed from the waste tire facility for recycling, disposal, resale, reuse or energy recovery;

(6) the specific location in the waste tire facility (i.e., tire pile number, bin number, building number, etc.) where whole used or scrap tires are received and where they are received from;

(7) a description of specific events or occurrences at the waste tire facility relating to routine maintenance, fires, theft, spraying for vectors, or other similar events or occurrences;

(8) other pertinent comments and remarks as needed; and

(9) the name and signature of a facility representative acknowledging truth and accuracy of the daily log.

(c) Transporter manifests. The waste tire facility operator shall retain a copy of all manifests received from a tire transporter, whether the manifest is for whole used or scrap tires delivered to the waste tire facility or removed from the facility.

(d) Maintenance of records and reporting. The waste tire facility operator shall retain a copy of all records showing the collection, disposition, and processing of the whole used or scrap tires. Such copies shall be retained for a period of three years and made available to the executive director upon request. A waste tire facility operator shall submit to the executive director an annual summary of their activities through December 31 of each year showing the number of whole used or scrap tires delivered, disposition of the tires, and the number of whole used or scrap tires or shredded tire pieces removed from the facil-

ity. The annual report shall be submitted no later than March 1 of the year following the end of the reporting period. The report shall be prepared on a form provided by the executive director.

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of this subchapter, waste tire facility operators shall use such controls and records to satisfy commission requirements under this section upon review and approval by the executive director.

§330.846. Delivery Requirement. The waste tire facility shall be required to deliver or have delivered, the shredded tire pieces that received reimbursement from the WTRF only at a commission permitted or registered waste tire storage facility. A facility that will eventually recycle, reuse, or recover energy from the shredded tire pieces may receive shredded tire pieces that were reimbursed from the WTRF. Any shredded tire piece not included in the reimbursement from the WTRF may be disposed of at a Type VIII-S or a Type VIII-L waste tire storage facility; however, the preferred destination for shredded tire pieces is a recycling, reuse, or energy recovery facility.

§330.847. Eligibility for the Waste Tire Recycling Fund (WTRF) Program. Eligibility of the waste tire facility for inclusion in the WTRF Program shall be determined as follows.

(1) Any person that operates a waste tire facility that has not received a registration from the executive director for the facility is not eligible for participation in the WTRF program.

(2) The WTRF program targets the clean-up of illegal whole used or scrap tire sites and the shredding of whole used or scrap tires generated on a daily basis from retail or wholesale dealers. Any person that operates a waste tire facility and has received a registration number from the executive director to shred whole used or scrap tires to a particle size no larger than nine square inches is eligible for participation in the WTRF.

§330.848. Penalties for Waste Tire Facilities. An owner or operator of a waste tire facility that violates the requirements of this subchapter shall be subject to suspension, revocation or denial of renewal of his/her registration pursuant to §330.843 of this title (relating to Waste Tire Facility Registration). The commission may also take any action against an owner or operator of a waste tire facility to secure compliance with the provisions of this subchapter, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.851. Applicability and Responsibility.

(a) Applicability.

(1) The regulations contained in these sections establish standards applicable for the disposal of whole used or scrap tires.

(2) For the purpose of these sections, the disposal of whole used or scrap tires pertains to the disposition of any whole used or scrap tire in a permitted municipal solid waste landfill, in a permitted tire monofill, in a waste tire facility designed for disposal of a tire, or for recycling, reuse or energy recovery.

(b) Responsibility.

(1) Landowners and/or operators of waste tire storage facilities containing whole used or scrap tires shall ensure that any whole used or scrap tires delivered at their facility for disposition are disposed of pursuant to §330.853 of this title (relating to Permit Requirements for Whole Used or Scrap Tire Disposal Facility).

(2) Persons who dispose of whole used or scrap tires regulated by this subchapter shall do so only at a waste tire storage facility permitted by the commission or at a registered waste tire facility engaging in recycling, reuse or energy recovery.

§330.852. Disposal of Whole Used or Scrap Tires.

(a) Disposal procedures for whole used or scrap tires are as follows.

(1) Whole used or scrap tires may not be disposed of in any permitted landfill or monofill except for incidental whole tires that are mixed in an enclosed packer unit and that cannot be removed without creating a health and safety hazard to the landfill worker.

(2) Whole used or scrap tires shall be split, quartered, or shredded prior to disposal. Whole tires that are filled with concrete or some other hardened material may be disposed of whole. Whole tires may not be disposed of on wheel rims unless approved by the executive director.

(3) Shredded tire pieces that are nine square inches or less may not be disposed of at any facility if the waste tire facility or mobile tire processor received reimbursement from the WTRF.

(4) Elements of used or scrap tires that remain, after processing, are considered solid waste and not used or scrap tires.

(b) Disposal of whole used or scrap tires will be allowed under the conditions identified in subsection (a) of this section, at any of the following sites:

(1) a permitted municipal solid waste landfill;

(2) a permitted tire disposal site or monofill; or

(3) a permitted tire processing facility designed for incineration of a tire or for resource recovery.

(c) The classification for the types of tire disposal sites/facilities listed in subsection (b) of this section shall be as follows:

(1) permitted landfill-Type I, II, III, or IV, as provided in §330.42(1), (2), (3), and (4) of this title (relating to Types of Municipal Solid Waste Sites);

(2) permitted tire disposal site or monofill-Type VIII-D. A Type VIII-D site may be permitted by the commission for the disposal of whole used or scrap tires only. For the purposes of these sections, a waste tire disposal site shall be considered to be a monofill. A Type VIII-D site shall not be operated within 300 yards of a public road without proper screening. The minimum operational standards are prescribed in §§330.111-330.114, 330.123, and 330.131-330.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites); and

(3) permitted tire incinerator-Type V, as provided in §330.42 (relating to Types of Municipal Solid Waste Sites).

§330.853. Permit Requirements.

(a) A permit application for a waste tire disposal site shall be submitted to the executive director prior to commencing operations. Permit application forms will be provided by the executive director upon request.

(b) Persons who obtain a permit from the commission to operate a waste tire disposal site shall maintain a copy of the permit at their designated place of business and at the designated disposal site location.

(c) Municipal solid waste landfills which have been granted a Type I, II, III, or IV permit shall be considered as an approved waste tire disposal facility.

(d) A permit for a waste tire disposal site shall be issued in accordance with the procedures, criteria and requirements indicated Subchapter E of this chapter (relating to Permit Procedures and Design Criteria). Whole used and scrap tire monofills are exempted from the requirements in §330.73 of this title (relating to Technical Information Required for Landfills Serving Less than 5,000 Persons/Permit Application, Part B) and §330.74 of this title (relating to Technical Information Required for Landfill Sites Serving 5,000 or More-Site Development Plan) for providing soil liner

and groundwater protection systems and for providing subsurface soil investigations and groundwater characterization studies.

(e) All waste tire disposal facilities shall split, quarter, or shred all used or scrap tires within 60 days after receipt, provided that vector control by means of spraying or other appropriate methods are used at a frequency based upon the weather conditions and other local ordinances that may apply. An exception to this requirement may be granted by the executive director if specific circumstances would warrant such an exception. A written request for such an exception must be made and this request must include all reasons for the exception. Whole used or scrap tires deposited at a disposal or waste tire facility that are delivered in an enclosed compactor vehicle, are granted an exemption from being split, quartered or shredded, provided the whole used or scrap tire is not retrievable by any means other than scavenging.

(f) Additional design and operational requirements for all tire monofills or any permitted solid waste landfill which utilizes a separate trench for tire disposal shall be as follows.

(1) In pits or trenches larger than 10,000 square feet, a firewall of not less than 10 feet thick shall be constructed to divide the trench into cells of not more than 10,000 square feet.

(2) The maximum depth of any trench shall be 50 feet.

(3) Final cover thickness on all completed areas shall be at least five feet. A variance may be granted on the five feet of final cover only if the applicant/operator provides an engineering study on the design and operation of a tire monofill using intermediate cover and a minimum of two and one-half feet of final cover and the department approves this study.

§330.854. Existing Waste Tire Disposal Sites.

(a) An existing underground waste tire disposal facility may remain in operation pending completion of the processing of an application for a permit, providing the facility is otherwise in full compliance with all applicable sections of this subchapter.

(b) A permit application for an existing waste tire disposal facility that intends to remain in operation shall be submitted to the executive director prior to June 1, 1992.

(c) Existing waste tire disposal facilities that elect to close shall submit an application for a waste tire disposal facility registration number prior to June 1, 1992. These facilities shall be classified by the executive director as a Type VIII-ID dis-

posal facility. The following documents (which shall require engineering certification) shall be submitted, upon request by the executive director, to document the intent to close the site:

(1) a closure/completion plan for the site which shall portray the proposed final contours, establishing side slopes and top grades, and the proposed drainage features. Protective measures for any area subject to flooding by a 100-year frequency flood shall be described;

(2) a closure schedule specifying the dates of the cessation of acceptance of whole used or scrap tires and of the completion of the closure of the site; and

(3) a certified copy of an affidavit to the public for the site, prepared in accordance with §330.152(c) of this title (relating to Site Completion and Closure Procedures).

(d) Existing waste tire disposal sites that elect to close will be subject to at least one inspection from the commission's district office to verify the proper closure of the site. The commission's Municipal Solid Waste Division will then acknowledge the termination of operations and closure of the site.

(e) Post closure maintenance must be provided for all closed waste tire disposal sites in accordance with §330.153 of this title (relating to Post-Closure Maintenance).

§330.855. Final Cover Requirements.

(a) Final cover for all tire monofill sites whether in existence prior to the effective date of these sections or whether permitted to operate after the effective date of these sections shall be a minimum of five feet. A variance may be granted on the five feet of final cover only if the applicant/operator provides an engineering study on the design and operation of a tire monofill using intermediate cover and a minimum of 2 1/2 feet of final cover and the executive director's review and approval of this study.

(b) The first 4-1/2 feet or more of cover (see subsection (d) of this section) shall be of clayey soil of classification SC or CL, as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, compacted in layers of no more than six compacted inches to help minimize the water infiltration potential. A classification CH soil may be used; however, this soil may experience excessive cracking and must therefore be covered by at least 12 inches of topsoil to help in retaining moisture. Other types of soil may be used with prior approval.

(c) The final six inches of cover shall be of suitable topsoil which will sustain the growth of vegetation, and shall be

seeded or sodded during the first growing season following application of final cover to help minimize erosion.

(d) Side slopes of all above ground disposal areas (aerial fills) shall not exceed a 25% grade (four feet horizontal to one foot vertical). The final cover for the top portion of a landfill shall have a minimum gradient of 2.0% and shall not exceed 6.0%, but shall possess a sufficient minimum grade to preclude ponding of surface water when total fill height and expected subsidence are taken into consideration. Side slopes in excess of 25% will not be authorized without controlled drainage such as flumes, diversion terraces, spillways, or other acceptable methods. Disposal of whole used or scrap tires above natural ground level is prohibited unless pursuant to an engineering site development plan approved by the executive director. Requests for changes to previously approved engineering site development plans or new engineering site development plans submitted in support of requests for aerial fills will be processed in accordance with §330.111 of this title (relating to General Requirements).

§330.856. Eligibility for the Waste Tire Recycling Fund (WTRF).

(a) Any tire monofill site declared eligible for the WTRF program shall operate in accordance with any additional requirements in §330.866 of this title (relating to Post Clean-Up Responsibilities).

(b) Eligibility of the site for inclusion in the WTRF program shall be determined as follows:

(1) The WTRF program targets cleanup of illegal waste tire sites and shredding of whole used or scrap tires generated on a daily basis from a retail or wholesale dealer. Tire monofills that have received a commission permit and have been classified are eligible for participation in the WTRF under the appropriate category.

(2) Type VIII-ID monofills that have disposed of whole used or scrap tires are eligible for participation under the whole used or scrap tires generated daily portion of the WTRF.

§330.857. Penalties for Waste Tire Disposal Facilities. An owner or operator of a waste tire disposal facility that violates the requirements of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law.

§330.861. Priority Enforcement List.

(a) Applicability. The regulations contained in these sections establish stan-

dards applicable to the creation and maintenance of the Priority Enforcement List (PEL) and the identification of a Potentially Responsible Party (PRP).

(b) Responsibility. Each person that operates a waste tire facility or a mobile tire processor and who participates in the WTRF shall be responsible for operating in compliance with all provisions of this subchapter.

§330.862. Potentially Responsible Party.

(a) An illegal waste tire site that is eligible for the PEL can be cleaned-up by a waste tire facility or a mobile tire processor and be eligible for reimbursement from the WTRF provided that a PRP for the site cannot be identified.

(b) For purposes of the WTRF and this subchapter, a PRP can be the property owner, the site operator, and/or the person who deposited the whole used or scrap tires on the site that has the financial ability to clean-up the illegal waste tire site. The actual determination of the PRP will be made by the executive director based on facts obtained during the investigation and evaluation of the site for classification. This classification will be based upon the financial ability of the landowner/operator and/or person who deposited the tires to clean-up the site, the market value of the property in relationship to the cost of clean-up, and the circumstances as to how and why the whole used or scrap tires were originally deposited on the site.

(c) If the executive director determines that a PRP exists for an illegal waste tire site then the executive director will send a Notice of Violation (NOV) letter by certified mail, to the last known address of the PRP or landowner, informing that individual that the executive director has identified him/her as a PRP. The NOV shall inform the PRP that he /she shall, within 20 days, contact a waste tire facility or mobile tire processor to begin clean-up of the illegal waste tire site at 85 cents per 18.7 pounds of whole used or scrap tires. If the PRP is financially unable to fund the clean-up of the illegal waste tire site, then the PRP shall notify the commission of his/her financial inability and submit a current financial statement detailing the PRP's financial status. Based on the executive director's review of the PRP's financial statement, the executive director will determine whether or not the WTRF will fund all or a percentage of the clean-up of the illegal waste tire site through an Agreed Order approved by the commission. If the executive director's review of the PRP's financial statement indicates the PRP is capable of funding the entire clean-up then the PRP will be issued a commission order requiring clean-up of the illegal waste tire site at 85 cents per 18.7 pounds of whole used or scrap tires.

(d) If the executive director determines that a PRP exists for an illegal waste tire site and has exhausted all possible means to force the PRP to comply with these regulations and the laws of the state, then the executive director shall notify the PRP or the landowner, by certified mail, at the last known address of the PRP or the landowner, of the intent of a waste tire facility or mobile tire processor to enter the property and for the property owner to make arrangements with a waste tire facility or mobile tire processor to transport the whole used or scrap tires off-site for shredding, or to shred the tires on-site and then transport the shredded tire pieces off-site. The executive director shall seek reimbursement from the PRP for the costs incurred in the clean-up and closure of the illegal waste tire site plus court costs and attorney's fees through civil lawsuit.

(e) The PRP shall be obligated to comply with the provisions of this subchapter that are applicable to the illegal waste tire site for which he/she is responsible. Failure of the PRP to comply with the applicable rules in this subchapter shall constitute a violation and shall subject the PRP to enforcement action and possible administrative penalties, or civil penalties as prescribed by state law.

(f) The PRP may elect to allow the executive director to use the WTRF to clean up the illegal waste tire site provided the following conditions are met:

(1) the PRP signs a release granting the executive director full authority to place the site on the PEL;

(2) the PRP signs an agreement to reimburse the WTRF the costs incurred by the executive director for clean-up of the illegal waste tire site;

(3) the PRP agrees to clean-up the illegal waste tire site of any other municipal solid waste (i.e., waste other than whole used or scrap tires) that may have been improperly disposed of on the property.

§330.863. Priority Enforcement List (PEL).

(a) The PEL shall be a list maintained by the executive director containing illegal waste tire sites identified and classified by the executive director. This list shall be used by the executive director for the assignment of sites to waste tire facilities or mobile tire processors. The whole used or scrap tires obtained from the PEL sites are subject to WTRF reimbursement and satisfy the requirements of §330.872(e)(3) of this title (relating to Waste Tire Recycling Fund Program).

(b) The PEL shall be published at least quarterly by the executive director.

The PEL will be published in the Texas Register in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (Ver-non 1992). A copy of the list can also be obtained from the Commission's Municipal Solid Waste Division.

(c) The PEL shall contain a thresh-old limit which will be used to determine the number of priority sites available for assignment by the executive director to pro-cessors. The threshold limit will be set by the executive director prior to the publica-tion of the PEL based on the following:

- (1) the locations of the sites ranked on the PEL;
- (2) the availability of funds for reimbursement from the WTRF;
- (3) the illegal waste tire sites previously assigned by the executive direc-tor and being cleaned up; and
- (4) the need to clean-up sites that have a the greatest potential for adverse impact on public health and the environ-ment.

(d) Any illegal waste tire site that exceeds the threshold limit on one PEL, but falls below the threshold limit in a subse-quent PEL for which cleanup has been initi-ated shall remain eligible for reimbursement from the WTRF.

(e) The PEL may be subdivided on a regional basis if the number of processors and the number of illegal waste tire sites warrant such a division.

§330.864. Ranking of Illegal Waste Tire Sites.

(a) Once an illegal waste tire site has been identified by the executive direc-tor, the executive director shall investigate the illegal waste tire site to rank it on a scale of one to 10, with one being lowest for each of the following conditions:

- (1) the illegal waste tire site loca-tion, to determine the potential hazard to human health and the environment based on location of the site, and site proximity to residences, businesses, or agricultural land;
- (2) the area climate, to deter-mine climatic conditions of the area will promote the development of potential health and environmental problems at the site;
- (3) the approximate number and condition of the whole used or scrap tires on the site, to determine the severity of the tire problem; and
- (4) the property owner/operator, to determine who can be identified as the PRP for the site and determine how the site came into existence.

(b) Illegal waste tire sites that are eligible for the PEL will be ranked in ac-cordance with the numerical ranking system

described in subsection (a) of this section. The numerical ranking for the location of the illegal waste tire site, climate of the area, identification of a PRP and severity of the waste tire problem at the site will be added together to obtain the overall numeri-cal ranking.

(c) The overall numerical ranking of an illegal waste tire site may change over a period of time if any of the individual factors enumerated in subsection (a) of this section is used to determine the overall rating change. A change could be an in-crease or a decrease in the overall numeri-cal rating.

§330.865. Assignment of PEL Sites.

(a) After an illegal waste tire site has been placed on the PEL, the executive director shall assign to a waste tire facility or mobile tire processor, a group of sites contained in the PEL. Any waste tire facil-ity or mobile tire processor registered by the executive director to participate in the WTRF shall receive reimbursement from the WTRF if the following requirements are met:

(1) The waste tire facility or mobile tire processor shall prepare a clean-up plan and time schedule for conducting the clean-up and removal of all whole used or scrap tires from the site;

(2) The waste tire facility or mobile tire processor shall submit the clean-up plan and time schedule to the executive director for approval and to the property owner for review.

(3) A waste tire facility or mo-bile tire processor of whole used or scrap tires or shredded tire pieces shall agree in writing to indemnify and hold harmless the commission and all of its employees and officers against any and all liability, loss, or damage arising out of or incident to any work performed pursuant to this subchapter.

(4) The property owner shall agree in writing to the clean-up plan and time schedule and shall further agree to hold the commission harmless of any dam-ages caused by the waste tire facility or mobile tire processor or the crews employed by either the waste tire facility or mobile tire processor.

(5) The mobile tire processor and waste tire facility shall agree in writing to remove all whole used or scrap tires or shredded tire pieces from the site and to comply with all requirements contained in §330.801-330.891 of this title (relating to Management of Used and Scrap Tires).

(6) The property owner shall sign an access agreement prepared by the executive director granting the executive di-rector full authority to authorize the mobile

tire processor or waste tire facility person-nel to enter the site to initiate and complete the clean-up activities.

(7) The mobile tire processor or waste tire facility shall complete the clean-up of the assigned illegal waste tire site prior to the mobile tire processor or waste tire facility being eligible to participate in the clean-up of subsequent PEL sites that may be assigned by the executive director.

(b) If the executive director deter-mines that an illegal waste tire site on the PEL contains more whole used or scrap tires than any single mobile tire processor or waste tire facility is likely to be able to collect and shred within a reasonable period of time, or if the proposed schedule re-ceived from mobile tire processor or waste tire facility indicates significantly longer time frames for total clean-up of that illegal waste tire site than is acceptable to the executive director, the executive director may decide to assign more than one mobile tire processor or waste tire facility to collect and process the whole used or scrap tires from the site.

(c) Processors that elect to partici-pate in the WTRF program will be allowed to clean-up PEL sites after April 1, 1992, provided all of the following criteria has been submitted to and approved by the ex-ecutive director:

(1) the clean-up plan and time schedule required by §330.877 of this title (relating to Approval to Collect and Process Tires from PEL Sites) has been approved by the executive director;

(2) the property owner has re-viewed the clean-up plan and time schedule and has signed the required access agree-ment allowing access to the PEL site;

(3) the mobile tire processor or waste tire facility has signed the illegal tire site clean-up agreement with the executive director;

(4) the executive director has approved the initiation of the clean-up ac-tivities to be undertaken by the mobile tire processor or waste tire facility;

(5) sufficient funds are available in the WTRF to enable reimbursement to the mobile tire processor or waste tire facil-ity; and

(6) the mobile tire processor or waste tire facility is in compliance with the applicable requirements of this subchapter and on schedule any other PEL site clean-up plans and time schedules.

§330.866. Post PEL Clean-Up Responsibilities.

(a) In instances where either the in-spection by executive director's personnel

or representatives of the executive director or actual removal of whole used or scrap tires from a PEL site indicates the existence of other solid waste that was improperly disposed of at the site, the property owner shall be responsible for the proper clean-up and disposal of such waste, and the proper closure of the site.

(b) Where the existence of other solid waste, referred to subsection (a) of this section, significantly interferes with the removal of whole used or scrap tires being collected by a mobile tire processor or waste tire facility in accordance with §§330.871-330.881 of this title (relating to Waste Tire Recycling Fund Program), the property owner shall immediately take steps, in cooperation with the executive director, to assist the mobile tire processor or waste tire facility in the safe removal of whole used or scrap tires from the PEL site.

(c) Once a PEL site has been cleaned up under the requirements of the WTRF program as described in §§330.871-330.878 of this title (relating to Waste Tire Recycling Fund Program) property owners shall not be eligible for future clean-up assistance as a result of further tire disposition on the owner's property.

§330.867. Authority of Commission Personnel.

(a) Commission personnel shall be assigned to each PEL site during the period of time that the selected mobile tire processor or waste tire facility has the executive director's approval to carry out clean-up activities at the PEL site. The assigned mobile tire processor or waste tire facility shall report on the status of the clean-up activities at the PEL site to the designated commission personnel in the timeframe and manner requested by such personnel.

(b) Commission personnel shall have the authority to determine whether conditions and/or activities at the PEL site or other circumstances warrant that clean-up activities be temporarily suspended.

§330.871. Waste Tire Recycling Fund (WTRF) Program.

(a) Applicability. The regulations contained in these sections establish standards and procedures for the operation of the WTRF program.

(b) Responsibility.

(1) Each person that operates as a mobile tire processor or waste tire facility and that is eligible to participate in the WTRF program shall be responsible for operating in compliance with the provisions of this subchapter.

(2) Each person that owns or operates an illegal waste tire site or is a

generator of whole used and scrap tires shall be responsible for complying with the provisions of this subchapter.

§330.872. Waste Tire Recycling Fund (WTRF) Program.

(a) Purpose. The purpose of the WTRF is to provide a means for the recycling of all whole used or scrap tires within the boundaries of the State of Texas so that the material contained in the tires can be effectively reused, recycled, or used in energy recovery facilities. The methods for recycling whole used or scrap tires are as follows:

- (1) through resale of whole tires;
 - (2) retreading of whole tires;
 - (3) use of the tires or portions of the tires in the manufacture of parts or products;
 - (4) beneficial use of whole tires;
- or
- (5) by shredding whole tires into pieces nine square inches or less in size.

(b) Objectives. The objectives of the WTRF Program are to clean-up illegal waste tire sites that contain whole used or scrap tires, collect whole used or scrap tires that are generated on a daily basis prior to being deposited at an illegal waste tire site and to provide a mechanism to recycle, reuse or recover the energy from whole used or scrap tires.

(c) Whole used or scrap tire category. The whole used or scrap tires that have been determined by the executive director to be eligible for reimbursement within the WTRF program are categorized as follows:

- (1) whole used or scrap tires from illegal waste tire sites and certain legal waste tire storage sites listed on the PEL;
- (2) whole used or scrap tires from a generator that accumulated the whole used or scrap tires on a daily basis;
- (3) whole used or scrap tires from sources other than those indicated in paragraphs (1) and (2) of this subsection as approved by the executive director.

(d) A \$2.00 tire fee shall be collected on all new tires sold in Texas. This fee shall be deposited into the WTRF. The monies in the WTRF shall be used to reimburse the mobile tire processor and the waste tire facility that comply with the requirements of this subchapter for the shredding of whole used or scrap tires.

(e) Operation of the WTRF Program. The WTRF Program shall be operated in the following manner.

- (1) A mobile tire processor or

waste tire facility that wishes to participate in the WTRF Program shall be in compliance with the requirements of this subchapter prior to a determination by the executive director of eligibility for reimbursement from the WTRF.

(2) A mobile tire processor or waste tire facility that intends to shred whole used or scrap tires shall shred the tires into a particle size no greater than nine square inches.

(3) A mobile tire processor or waste tire facility shall shred at least 25% of the gross monthly weight of shredded tire pieces from PEL sites.

(4) A mobile tire processor or waste tire facility shall shred at least 25% of the gross monthly weight of shredded tire pieces from generator sites (i. e. retail or wholesale dealers of whole used or scrap tires).

(5) A mobile tire processor or waste tire facility shall shred no greater than 50% of the gross monthly weight of shredded tire pieces from waste tire sites that have received executive director approval of WTRF eligibility under subsection (c)(3) of this section.

(6) Any remaining percentage of the gross monthly weight of shredded tire pieces can be obtained from the categories in paragraphs (3)-(5) of this subsection.

(7) The mobile tire processor or waste tire facility shall submit his/her reimbursement request on a payment voucher to the executive director on a monthly basis. The payment voucher form shall be supplied by the executive director.

(8) The mobile tire processor or waste tire facility shall maintain and retain all reimbursement records for a period of three years and shall make such records available to the executive director on request.

§330.873. Announcement of Intent to Participate.

(a) A mobile tire processor or waste tire facility that is registered with the executive director and that intends to receive reimbursement from the WTRF for shredding whole used or scrap tires so as to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery, shall receive, on a quarterly basis, a copy of the updated PEL from the executive director.

(b) Waste tire facilities or mobile tire processors shall within five days of receipt of the updated PEL notify the executive director in writing of their intent to be assigned new PEL sites, and include in priority order, the sites requested to be assigned to them.

(c) Within 10 days of the executive director's receipt of a mobile tire processor's or waste tire facility's notice of intent to participate, the executive director shall begin a job performance evaluation to determine whether the clean-up on previously assigned PEL sites was performed to the executive director's satisfaction. After the executive director determines satisfactory work performance, the waste tire facility or mobile tire processor shall be notified of their assignment of an additional site or group of PEL sites for clean-up. Also included with the site assignment notification shall be a copy of the site clean-up agreement to the mobile tire processor or waste tire facility owner for signature and return to the executive director.

(d) Following the executive director's receipt of the signed site clean-up agreement and receipt of the other items required in §330.877 of this title (relating to Approval to Collect and Process Tires from the PEL Sites), and after the executive director's inspection of the PEL site with the waste tire facility or mobile tire processor to determine the approximate number of whole used or scrap tires at the site, and the approximate time it will take to clean-up the site, clean-up of the newly assigned PEL site(s) can begin.

§330.874. Site Clean-Up Agreement.

(a) Waste tire facilities or mobile tire processors that are registered with the executive director and that intends to receive reimbursement from the WTRF for shredding whole used or scrap tires shall enter into a Site Clean-Up Agreement (agreement) as a guarantee of job performance.

(b) The agreement shall require, at a minimum:

(1) that the waste tire facility or mobile tire processor shall clean-up all PEL sites assigned and listed in the agreement;

(2) that the term "clean-up of the site" shall constitute satisfactory completion of those requirements stated in §330.877 of this title (relating to Approval to Collect and Process Tires from PEL Sites);

(3) that the processor shall obtain a contract or agreement with the property owner that states the conditions by which the waste tire facility or mobile tire processor will be granted access to the PEL site;

(4) that the waste tire facility or mobile tire processor shall meet with the commission's district office prior to initiation of site clean-up and shall agree upon a clean-up schedule as required by §330.877 of this title (relating to Approval to Collect and process tires from PEL Sites).

(5) that failure to clean-up the PEL site as required by the agreement shall prohibit the waste tire facility's or mobile tire processor's eligibility for reimbursement from the WTRF until such time as the clean-up of the PEL site is completed to the satisfaction of the executive director;

(6) that the waste tire facility or mobile processor upon completion of the PEL site clean-up shall contact the designated commission district office to confirm that clean-up of the PEL site has been completed;

(7) upon receipt of confirmation of satisfactory clean-up from the commission's district office and announcement of intent to participate by the waste tire facility or mobile tire processor, the executive director may assign additional PEL sites to the waste tire facility or mobile tire processor pursuant to §330.873 of this title (relating to Announcement of Intent to Participate).

(c) Should the waste tire facility's or mobile tire processor's registration to shred whole used or scrap tires be suspended or revoked by the commission pursuant to §330.822(f) of this title (relating to Mobile Processor Registration) and §330.843(g) of this title (relating to Waste Tire Facility Registration) respectively, then the PEL sites remaining in the Site Clean-Up Agreement shall be reassigned.

§330.875. Public Notice of Intent to Operate.

(a) Waste tire facilities that are registered with the executive director and intend to shred whole used or scrap tires to receive reimbursement from the WTRF shall publish such intent in a local area newspaper where they intend to shred whole used or scrap tires prior to commencement of shredding activity.

(b) Mobile tire processors that are registered with the executive director and intend to shred whole used or scrap tires to receive reimbursement from the WTRF shall publish such intent in the *Texas Register* prior to commencement of shredding activity.

(c) The notice of intent published by the waste tire facility and mobile tire processor shall contain at a minimum the following information:

(1) the waste tire facility or mobile tire processor registration number;

(2) the name under which the waste tire facility or mobile tire processor registration number was issued;

(3) the permanent street address of the waste tire facility;

(4) a statement indicating the area in Texas that the mobile tire processor will generally operate;

(5) a brief statement explaining the whole used or scrap tire shredding process and specifically what activities the waste tire facility or mobile tire processor intends to perform at the location; and

(6) where the shredded tires will be stored, if different from the processing site.

(d) The public notice of intent to operate shall identify the Texas Water Commission as the state agency administering the WTRF program and shall also contain the Austin, Texas address of the commission and the main telephone number of the Municipal Solid Waste Division where questions concerning the WTRF Program can be directed.

(e) Prior to publication in a local area newspaper or the *Texas Register*, as applicable, the public notice of intent shall be reviewed by the executive director for approval.

(f) The public notice of intent shall be published in the local area newspaper or the *Texas Register* at least five days prior to commencing shredding activities. The public notice of intent shall be published for a period of 14 days continuously.

§330.876. Other Permits or Registrations Required.

(a) Mobile tire processors or waste tire facilities that intend to participate in the WTRF program described in this subchapter and that intend to ship whole used or scrap tires from any PEL site, for temporary storage prior to shredding, or for immediate shredding, shall have a registered waste tire storage site at which whole used or scrap tires shall be held for no longer than 60 days, or the number of days allowed by the named facility's registration (whichever is greater), prior to their being shredded.

(b) Mobile tire processors or waste tire facilities that intend to participate in the tire recycling program described in this subchapter and have not made arrangements for the immediate shipment of all shredded tire pieces, for which reimbursement under the WTRF is to be sought, directly to a recycler, reuser or energy recovery facility shall either:

(1) also be the owner/operator of a commission permitted or registered waste tire storage site at which any shredded tires for which reimbursement is to be sought, shall be temporarily stored under the direct supervision of the person requesting reimbursement; or

(2) made arrangements with other registered or permitted waste tire storage site owners or operators for the temporary storage of shredded tire pieces.

§330.877. Approval to Collect and Process Tires from PEL Sites.

(a) Prior to collecting and/or shredding whole used or scrap tires from any PEL site, a mobile tire processor or waste tire facility shall provide a clean-up plan and a time schedule for completing the clean-up of all whole used and scrap tires from the PEL site. Clean-up activities shall commence only after the submitted plan and schedule have been approved by the executive director and the provisions of §330.865 of this title (relating to Assignment of Priority Enforcement List Sites) have been met.

(b) The clean-up plan and time schedule shall include the following:

(1) the estimated number of whole used or scrap tires collected and/or shredding capacity, in either tires or pounds of shredded rubber per day, that the waste tire facility or mobile tire processor can perform at the site;

(2) the approximate number of days required to complete the site clean-up, however, if more whole used or scrap tires are located on the PEL site than the original number of tires used to calculate the overall project length, a correction factor may be applied, provided verification is received from the commission's district office; and

(3) the date, or range of dates that work on the site shall commence.

(c) If the executive director finds that any of the schedule related information described in subsection (b)(1)-(3) of this section to be unacceptable, an amended clean-up plan or time schedule shall be negotiated between the commission's district office and the waste tire facility or mobile tire processor.

(d) The PEL site clean-up plan submitted by a mobile tire processor or waste tire facility shall, at a minimum, include the following:

(1) the waste tire facility and mobile tire processor registration number;

(2) the name under which the waste tire facility or mobile tire processor registration number was issued;

(3) whether the waste tire facility or mobile tire processor intends to shred all the whole used or scrap tires on the PEL site on-site, haul all such tires to a registered waste tire facility, or conduct the clean-up using both methods;

(4) the total number of whole used or scrap tires by weight from other PEL sites that, as of the date the site clean-up plan was filed, have been collected and/or shredded;

(5) the total number of whole used or scrap tires by weight from in-state

sources other than PEL sites that, as of the date the site clean-up plan was filed, have been collected and/or shredded;

(6) the method of recycling, reuse or energy recovery planned for the whole used or scrap tires which are proposed to be collected and shredded by the waste tire facility or mobile tire processor;

(7) the registration number(s) of all waste tire transporters who are expected to haul either whole used or scrap tires or shredded tire pieces from the PEL site; and

(8) the identification of any temporary waste tire storage sites, proposed to be utilized for either whole used or scrap tires or shredded tire pieces.

(e) The executive director may require that only waste tire facilities or mobile tire processors that are willing to transport all whole used or scrap tires off the PEL site for shredding at a registered waste tire facility shall be allowed to collect and shred tires from that PEL site.

(f) The executive director may require that collection and shredding at a PEL site be conducted only between certain hours of the day and on certain days of the week.

§330.878. Shipping, Record Keeping, and Reporting Requirements.

(a) Shipments.

(1) All shipments of whole used or scrap tires to a waste tire facility or to a mobile tire processor temporarily located for shredding, shall be manifested on forms approved by the executive director and shall contain the information described in §330.807 of this title (relating to Generator Recording Keeping).

(2) All whole used or scrap tires that receive reimbursement from the WTRF on or after April 1, 1992, shall be manifested from the point of generation to the waste tire facility or mobile tire processor. In the case of mobile tire processors operating at a PEL site, the whole used or scrap tires must be collected and shredded and a daily log shall be maintained to account for these collected tires.

(b) Record keeping.

(1) All waste tire facilities and mobile tire processors shall maintain complete records tracking the number of whole used or scrap tires collected, the source of the tires, the number of whole used or scrap tires shredded, and the weight of shredded tire pieces in pounds and/or tons.

(2) Copies of all manifests, daily logs, or other records shall be made available to the executive director on request.

(c) Applicability of other sections in this subchapter. Except as provided in §330.878(a)-(e) of this title (relating to Shipping, Record Keeping, and Reporting Requirements), all procedures set forth in §330.825 of this title (relating to Mobile Processor Record Keeping), §330.813 of this title (relating to Delivery Requirement), §330.815 of this title (relating to Transporter Record Keeping), and §330.817 of this title (relating to Transporter Fees) shall apply to this section.

(d) Weighing of shredded tire pieces. All tires shredded by a waste tire facility or mobile tire processor shall be weighed and the total amount of shredded tire pieces recorded, by date.

(e) Requests for reimbursement. Not later than the 20th day of the month, waste tire facilities or mobile tire processors that have shredded whole used or scrap tires during the preceding month, shall have contacted the district office requesting an inspection of the waste tire facility or mobile tire processor records and an approval of the requested payment voucher. Upon district office approval, the voucher will be signed and submitted by the waste tire facility operator or mobile tire processor to the commission's district office for mailing to the central office for reimbursement. The payment voucher shall be submitted on a form to be provided by the executive director. The following information shall be included in the payment voucher form.

(1) For all waste tire facilities or mobile tire processors, the total pounds of whole used or scrap tires shredded during the previous calendar month shall be reported in the following manner:

(A) the total pounds of tires shredded from a PEL site during the calendar month; and

(B) the total pounds of tires shredded from a generator (i.e.-retail or wholesale dealers) during the calendar month; and

(C) the total pounds of tires shredded during the calendar month at in-state locations other than PEL sites and generator sites that have received executive director approval indicating that the tires qualify for reimbursement under the WTRF.

(2) Mobile tire processors that shred whole used or scrap tires at locations other than at a registered waste tire facility which also serves as that mobile tire processor's permanent address; the waste tire facility shall report in addition to the requirements in subsection (e)(1) of this section, the following information:

(A) the total pounds of tires shredded at the PEL site during the same calendar month; and

(B) the total pounds of tires shredded during the same calendar month at in-state locations other than PEL sites.

§330.879. WTRF Reimbursement Policies and Procedures.

(a) WTRF reimbursements provided by the State of Texas under this subchapter shall only be made for the shredding of whole used or scrap tires and shall be in accordance with the reimbursement rate required by law.

(b) To be eligible to receive reimbursement for the shredding of whole used or scrap tires, waste tire facilities, or mobile tire processors shall at their own expense provide:

(1) all payments to registered waste tire transporters covering the expenses associated with the shipment of whole, split, or quartered tires from a Texas wholesale or retail tire dealer to any registered waste tire facility or mobile tire processor;

(2) all payments to registered waste tire transporters covering the expenses associated with the shipment of any tire, whether whole, split, quartered, or shredded, from any PEL site to any other location approved by the executive director;

(3) all payments to laborers, equipment operators, or other employees whose services may be needed, in order to comply with the PEL site clean-up requirements described in §330.877 of this title (relating to Approval to Collect and Process Tires From PEL); and

(4) all payments associated with the acquisition, maintenance, and/or operation of any equipment or machinery needed to comply with the PEL site clean-up requirements described in §330.877 of this title (relating to Approval to Collect and Process Tires From PEL Sites).

(c) Shredded tire pieces for which reimbursement under this subchapter is sought must meet the minimum size requirement of less than nine square inches for whole used or scrap tires that have been collected and shredded by a waste tire facility or mobile tire processor on or after April 1, 1992. Tires accumulated at waste tire

storage facilities that are not PEL sites prior to April 1, 1992, are not eligible for reimbursement from the WTRF.

§330.880. Payments to Waste Tire Facilities or Mobile Tire Processors.

(a) The executive director each month shall pay a waste tire processor that shreds scrap tires and meets the requirements of this section and rules adopted under this section an amount equal to .85 cents for each 18.7 pounds of whole used or scrap tires shredded by the processor during the preceding calendar month.

(b) A waste tire facility or mobile tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the executive director in accordance with forms prescribed by the executive director;

(2) demonstrate that:

(A) all tires for which payment is sought have been shredded to a particle size not larger than nine square inches; and

(B) not less than 25% of those tires were collected from illegal tire sites listed on the executive director's PEL pursuant to §330.863 of this title (relating to Priority Enforcement List);

(C) not less than 25% of those tires were collected from generators of whole used or scrap tires; and

(3) provide any other information that the executive director determines is needed to accomplish the purposes of this subchapter.

(c) A waste tire facility or mobile tire processor that in any month exceeds the 25% minimum requirement of subsection (b)(2)(B) or (C) of this section shall receive a credit for the amount in excess of 25% that may be used to meet the minimum requirement during a later month.

§330.891. Special Conditions for Beneficial Use of Whole Used or Scrap Tires.

(a) Beneficial uses of whole used or scrap tires for erosion control, reefs in coastal waters, decorations, containment

walls for composting or commercial operations, traffic control, or bumpers for boat dock and boats shall not require a registration number or commission permit.

(b) At no time shall whole used or scrap tires utilized for beneficial use be allowed to migrate from the beneficial use location due to surface water run-off, stream or river flow, or other such occurrence.

(c) Whole used or scrap tires utilized for beneficial use shall be staked or tied down to a permanent natural or man-made object. The tires shall be chained or tied together provided at least two of the tires are permanently anchored. A containment barrier such as fencing or other suitable product can also be used to prevent tire migration. A one inch diameter hole shall be drilled into each tire at lowest point to provide drainage and prevent breeding of vectors.

(d) All beneficially used whole used or scrap tires shall be inspected on a regular basis to assure compliance with §330.831(b) of this title (relating to Storage of Whole Used or Scrap Tires or Shredded Tire Pieces)

(e) Erosion control does not include the stockpiling of whole used or scrap tires in a ravine, ditch, or eroded area. All tires in excess of those actually required for the erosion control project shall be removed from the site.

(f) Beneficial use of shredded tire pieces is not regulated by this subchapter except for shredded tire pieces that were generated from a processing activity that received reimbursement from the WTRF shall not be used for beneficial use at a permitted municipal or industrial solid waste landfill except as approved by the Texas Water Commission.

Issued in Austin, Texas, on April 22, 1992.

TRD-9205584

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: April 22, 1992

Expiration date: August 20, 1992

For further information, please call: (512) 463-8069



Proposed Sections

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

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

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter G. School Facilities School Facilities Standards

• 19 TAC §§61.101-61.104

The Texas Education Agency proposes new §§61.101-61.104, concerning school facilities standards. The sections establish standards in the areas of space, educational adequacy, and construction quality. They outline minimum square footage requirements for specific instructional spaces and require districts to comply with recognized building codes. The sections also authorize the commissioner to make recommendations concerning the best practices for facility construction in relation to educational adequacy.

Joe Wisnoski, senior director of resource planning and reports, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The implications for state government include the cost of hiring additional personnel to assist in the further development of these standards and provide technical assistance to districts in understanding and implementing the rules. Project personnel needed to implement these new rules as well as administer the \$50 million emergency grant program include two architects with experience in the area of school construction at a cost of \$84,000 per year. This figure includes salaries, fringe benefits, and office expenses. An additional \$5,000 will be required in the first year to purchase furniture and computer equipment. This amount will be realized from a reduction of two positions in another agency function.

The implications for local government (school districts) will be the cost of meeting the standards in construction. These costs are not expected to be significant, as the standards should reflect the practice of most architects and districts in building appropriate school facilities. The precise economic impact of these rules on any single project or district cannot be estimated.

Mr. Wisnoski and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sec-

tions will be that public school buildings will be safe and appropriate for the educational programs they are intended to house. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The new sections are proposed under the Texas Education Code, §16.402, which provides the State Board of Education with the authority to establish standards for adequacy of school facilities.

§61.101. Applicability.

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

(1) Instructional space—General classrooms and specialized classrooms, and major support areas.

(2) Square feet per pupil—The net interior space of a room divided by the maximum number of pupils to be housed in that room during a single class period.

(3) Square foot per room measurements—Actual sizes for a room that will house 22 students at the elementary level and 25 students at the middle or high school level. Net room square footage is inclusive of exposed storage space, such as cabinets or shelving, but exclusive of hallway space. Storage space such as closets or preparation offices is not included in the room square footage.

(b) Documents required by effective date. These requirements shall apply to projects for new construction or major renovations for which final construction documents have not been approved by a school board prior to September 1, 1992.

(c) All other requirements applicable. School districts shall meet all require-

ments contained in §§61.101-61.104 of this title (relating to School Facilities Standards).

(d) Certification of design and construction.

(1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards and used the best professional judgement and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform with all requirements contained in §§61.101-61.104 of this title, except as indicated on the certification.

(2) To ensure that buildings have been designed and constructed according to requirements of this part, each of the involved parties must execute responsibilities as follows.

(A) The school district shall provide the architect with enrollment projections, educational specifications, building code specifications, and educational objectives for the facility. The district shall provide this information to the design professional as specified by the commissioner of education.

(B) The design professional, either an architect or engineer, shall perform a code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.

(C) The design professional shall also certify that the building has been designed according to the criteria established in §§61.102-61.104 of this title, based on enrollment information provided by the district.

(D) The building contractor or construction manager and all major subcontractors shall certify that the facility has been constructed according to the certified design and conforms with the construction documents as specified in subparagraph (C) of this paragraph.

§61.102. Space, Minimum Square Foot Requirements.

(a) A school district is required to provide instructional space as indicated in subsection (b) of this section.

(b) For each type of instructional space, a district may satisfy the requirements of the rule by using either the standard for the minimum square feet per pupil or the standard for square feet per room, as appropriate. Room size requirements are based on rooms that will house 22 students at the elementary level and 25 students at the middle or high school level.

(1) General classrooms.

(A) Classrooms for prekindergarten or kindergarten shall have a minimum of 32 square feet per pupil or 700 square feet per room.

(B) Classrooms at the elementary school level shall have a minimum of 30 square feet per pupil or 650 square feet per room.

(C) Classrooms at the secondary school level shall have a minimum of 28 square feet per pupil or 700 square feet per room.

(2) Specialized classrooms.

(A) For all grade levels, language laboratories shall have a minimum of 35 square feet per pupil or 900 square feet per room.

(B) Computer laboratories shall have a minimum of 41 square feet per pupil or 900 square feet per room at the elementary school level; and 41 square feet per pupil or 900 square feet per room at the secondary school level.

(C) Science lecture/workrooms shall have a minimum of 41 square feet per pupil or 900 square feet per room at the elementary school level; 45 square feet per pupil or 1,150 square feet per room at the middle school level; and 45 square feet per pupil or 1,145 square feet per room at the high school level.

(3) Major support areas.

(A) Gymnasiums shall have a minimum of 40 square feet per pupil or 4,000 square feet per room at the elementary school level; 40 square feet per pupil or 5,200 square feet per room at the middle school level; and 50 square feet per pupil or 7,500 square feet per room at the high school level.

(B) Libraries shall have a minimum of 48 square feet per pupil or 1,450 square feet per room at the elementary school level; 80 square feet per pupil or 3,000 square feet per room at the middle school level; and 80 square feet per pupil or 4,000 square feet per room at the secondary school level. All schools will base the student capacity for libraries at 12% of total student enrollment as related to core facility capacity.

§61.103. Educational Adequacy.

(a) The commissioner of education shall establish recommendations concerning the best practice for the development of educational specifications to ensure the educational adequacy of all public school facilities.

(b) Recommendations from the commissioner shall include a long-range planning process for school facilities as part of the overall planning process to ensure that all facilities meet the needs of the educational program.

§61.104. Construction Quality. School districts located in an area with an adopted building code shall meet their local building codes (including fire and mechanical, electrical, and plumbing codes). School districts in areas in which no local code is applicable shall use either the Uniform Building Code or Standard (Southern) Building Code (and related fire and mechanical, electrical, and plumbing codes). A third party independent review shall be conducted to ensure that plans conform with that code before the start of construction. This review shall be conducted by either an architect or by a certified plan review professional.

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

Issued in Austin, Texas, on April 16, 1992.

TRD-9205624

Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Earliest possible date of adoption: June 1, 1992

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

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Chapter 101. Assessment

• 19 TAC §§101.1-101.6

The Texas Education Agency proposes new §§101.1-101.6, concerning assessment. The new chapter provides district guidelines for administering the Texas Assessment of Academic Skills (TAAS) and the Norm-referenced Assessment Program for Texas (NAPT).

Marvin Veselka, associate commissioner for curriculum and assessment, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Veselka and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that they will help districts administer student assessment programs in an equitable and impartial fashion. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The new sections are proposed under the Texas Education Code, Chapter 21, Subchapter O, which provides the State Board of Education with the authority to adopt a statewide student assessment plan.

§101.1. General Provisions.

(a) The State Board of Education shall adopt an interim plan for assessment that will remain in effect until the requirements of Texas Education Code, §21.5512, regarding the development of a statewide assessment program that is primarily performance-based, are fully implemented. This interim plan will serve as a transition between the assessment plan required under Texas Education Code, §21.551, and the plan to be developed under Texas Education Code, §21.5512.

(b) Spanish-version criterion-referenced assessment instruments in reading, writing, and mathematics will continue to be administered to appropriate grade 3 students in the fall of each school year until other measures have been developed for determining language proficiency and/or skills in Spanish at the elementary school level.

(c) The State Board of Education shall establish the standards for satisfactory performance on each criterion-referenced assessment instrument developed under Texas Education Code, Chapter 21, Subchapter O. These assessment instruments will be approved by the commissioner of education.

(d) The commissioner of education may specify other testing periods as needed for the administration of assessment instruments in compliance with Texas Education Code, Chapter 21, Subchapter O.

(e) Each school district shall administer assessment instruments to its students in accordance with procedures established by the commissioner of education and procedures set forth in the applicable test administration materials, and shall assist with field tests and other activities necessary to implement the requirements of the Texas Education Code, Chapter 21, Subchapter 0.

(f) The superintendent or chief administrative officer in each school district shall be responsible for coordinating all local assessment activities, including:

- (1) scheduling testing times on all affected campuses in accordance with the testing periods designated by the commissioner of education;
- (2) administering the assessment instruments to the appropriate students;
- (3) ensuring the maintenance of security; and
- (4) ensuring that all assessment instruments are administered in accordance with procedures established by the commissioner of education.

§101.2. Exit Level Requirements.

(a) The superintendent or chief administrative officer in each school district shall be responsible for:

- (1) informing eighth grade students expected to take the exit level assessment instrument and their parents or guardians, as well as eighth through twelfth grade students new to the district and their parents or guardians, of the instructional outcomes to be measured on the exit level assessment instrument;
- (2) notifying current students eligible to take the exit level assessment instrument and their parents or guardians of the dates, times, and places that the instrument will be administered, and emphasizing the importance of testing on the scheduled dates; and
- (3) publicizing within the community served by the district the dates on which the exit level assessment instrument will be administered, the precise location and time when testing will take place, and what actions a former pupil interested in testing or retesting should take to assure access to the testing area and availability of testing materials.

(b) A student must meet the criteria for minimum expectations established by the State Board of Education on the exit level examination of academic skills to be eligible to receive a high school diploma.

(c) To be eligible to receive a high school diploma, a student with a handicap-

ing condition must meet minimum expectations on the section(s) of the exit level assessment instrument for which he or she is eligible, as specified in his or her individual educational plan by the admission, review, and dismissal (ARD) committee.

(d) A student will not receive a diploma unless he or she has attained minimum expectations on all sections of the exit level assessment instrument. Each student who fails to demonstrate satisfactory performance on the exit level assessment instrument shall retake the assessment instrument each time it is administered until minimum expectations are demonstrated. A student who has been denied a diploma because of failure to meet minimum expectations on any section of this assessment instrument may retake the section(s) each time the assessment instrument is administered.

(e) Although increasingly difficult standards and examinations may be established for the exit level assessment instrument, no individual will be required to demonstrate subject-area performance at a standard higher than the one in effect when the student was first eligible to take the assessment instrument.

(f) Established requirements and procedures for testing out-of-school examinees will be outlined in the appropriate test administration materials.

§101.3. Testing Appropriate Students.

(a) Each student for whom an appropriate criterion-referenced assessment instrument has been developed shall participate in the administration of the instrument. A student shall be exempted from participation only upon: the formal determination of the student's admission, review, and dismissal committee, documented in the student's individual educational plan; or the formal determination of the student's language proficiency assessment committee, which shall also be documented. On the basis of limited English proficiency, a student may be exempted from administration of the criterion-referenced assessment instrument at one grade level only and shall thereafter participate in all administrations at subsequent grade levels. During the period of transition to the redesigned assessment plan, any student with limited English proficiency who is scheduled to participate in the assessment at the grade level following the one in which the student was exempted may receive one additional exemption at that grade if deemed necessary by the student's language proficiency assessment committee. The language proficiency assessment committee shall recommend appropriate alternative and formative assessment strategies for each student exempted from the required state assessment program. No student shall be

exempted from an exit level examination based on limited English proficiency.

(b) The appropriate test administration materials shall set forth any allowable modifications in the administration of criterion-referenced assessment instruments.

(c) For the Norm-referenced Assessment Program, students who meet the selection criteria used in the national standardization of the examinations in this program must participate in this program. The selection criteria must be provided to all school districts, and the districts must provide the selection criteria to parents and the public upon request. These selection criteria as well as exceptions, optional testing, and allowable and nonallowable modifications are explained in the appropriate test administration materials. The language proficiency assessment committee may grant exemptions to students of limited English proficiency. The language proficiency assessment committee shall recommend appropriate alternative assessment strategies for each student exempted from the Norm-referenced Assessment Program. The language proficiency assessment committee shall determine when the student has sufficient English proficiency to participate in the Norm-referenced Assessment Program; however, the language proficiency assessment committee may not exempt a student for longer than three years.

§101.4. Security and Confidentiality.

(a) Violation of the security or confidential integrity of any examination is prohibited. An examination is defined as any secure test or other assessment instrument required by state statute, rule, or regulation that is administered for the purpose of assessing student academic achievement or performance.

(b) In accordance with Texas Education Code, §13.046, the commissioner may sanction a person who engages in conduct prohibited by this section.

(c) Conduct that violates the security or confidential integrity of an examination is defined as any material departure from either the requirements established by the commissioner for the administration of an examination, or from the procedures set forth in the applicable test administration materials, including, but not limited to:

- (1) unauthorized viewing of secure examination materials;
- (2) wrongful duplication of any portion of secure examination materials;
- (3) revealing the contents of any portion of secure examination materials;
- (4) providing any examinee the answer to any examination question;

(5) changing or altering any response of an examinee to an examination question;

(6) encouraging or assisting another to engage in the conduct described in paragraphs (1)-(5) of this subsection; or

(7) failure to report to appropriate authority that another has engaged in the conduct set forth in paragraphs (1)-(6) of this subsection.

(d) The superintendent or chief administrative officer of each school district shall ensure that procedures are in place that are designed to ensure the security and confidential integrity of all assessment instruments and test items. It shall be the responsibility of the superintendent or chief administrative officer to notify the Texas Education Agency in writing of conduct that violates the security or confidential integrity of an examination.

(e) For the purpose of academic recognition, the confidentiality requirements of Texas Education Code, §21.556, may be waived in writing by a student's parent or guardian, or, where appropriate, by the student.

§101.5. Reporting of Results.

(a) Student performance data aggregated by campus and district, with appropriate interpretations, shall be reported to the school district board of trustees according to the schedule outlined in the appropriate test administration materials.

(b) School districts shall notify each student and his or her parent or guardian of assessment results according to the schedule outlined in the appropriate test administration materials, observing confidentiality requirements in the Texas Education Code, §21.556(b).

(c) Assessment results shall be included in each student's academic achievement record and shall be furnished for each student transferring to another school district.

§101.6. Local District Achievement Testing.

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

(1) Company or organization—Publishers of assessment instruments, regional education service centers, and other entities providing scoring services.

(2) Assessment instrument—A group-administered achievement test.

(3) Same form of an assessment instrument—The same test or test form, or two or more tests or test forms that yield

equivalent or parallel scores and share 50% or more of the same items on each form. This term does not include ancillary materials that may accompany assessment instruments.

(b) Districts participating in optional local testing under Texas Education Code, §21.560, shall adhere to the rules as follows.

(1) Updated norms will be produced by the publisher every two school years for each assessment instrument covered by this section. The date of publication of the norms will determine when the next update is required. The date of publication may not exceed one year from the date of data collection. After establishing national standardization norms for a particular form, user norms may be employed for the biennial updates. Publishers producing the updated user norms must use sampling and psychometric procedures approved by the commissioner of education. These norms must be provided to scoring centers as soon as they are available, to minimize delays in reporting. National standardization norms are not eligible for use in Texas more than seven years after the date of publication.

(2) To maintain the security of the contents of all assessment instruments, school districts shall follow procedures for test administration established by the commissioner of education. Violators of security provisions will be subject to penalties as stated in §101.4(b) of this title (relating to Security and Confidentiality).

(3) School districts may not purchase assessment instruments or services from companies or organizations not in compliance with this section.

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

Issued in Austin, Texas on April 16, 1992.

TRD-9205626
Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Earliest possible date of adoption: June 1, 1992

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

◆ ◆ ◆ Assessment of Minimum Skills • 19 TAC §§101.1-101.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency proposes the repeal of §§101.1-101.8, concerning assessment. The chapter is being repealed in ac-

cordance with the sunset review process mandated by the 71st Legislature in Senate Bill 1. A new Chapter 101 is being proposed in a separate submission.

Marvin Veselka, associate commissioner for curriculum and assessment, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Veselka and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the State Board of Education (SBOE) will adopt clarified assessment rules to replace the old sections. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under title 19, Texas Administrative Code, relating to public education.

§101.1. General Provisions.

§101.2. Exit Level Requirements.

§101.3. Exemptions.

§101.4. Security and Confidentiality.

§101.5. Reporting of Results.

§101.6. National Comparative Data.

§101.7. Local District Achievement Testing.

§101.8. State Norm-Referenced Testing.

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

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Chapter 149. Education Personnel Development

Subchapter E. Centers for Professional Development and Technology

• 19 TAC §149.91

The Texas Education Agency proposes new §149.91, concerning centers for professional development and technology. The new section will outline requirements for establishment and funding of centers for professional development and technology through institutions of higher education with approved teacher education programs.

Lynda Haynes, director of professional staff development, has determined that for the first five-year period the proposed new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. House Bill 1, 72nd Legislature, First Called Session, appropriated funding to support the initial development of the centers. On application by a center, the State Board of Education shall make grants to the center for its program from funds derived from gifts, grants, and legislative appropriations for that purpose.

Ms. Haynes and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be that the centers will help teachers work effectively with a culturally diverse student population to increase learning, success, and achievement. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The new section is proposed under the Texas Education Code, §13.050, which provides the State Board of Education with the authority to develop the process for the establishment of centers for professional development.

§149.91. *The Establishment of Centers for Professional Development and Technology.*

(a) General provisions. Effective with the 1992-1993 school year, institutions of higher education with approved teacher education programs may establish centers for professional development and technol-

ogy under a process developed jointly by the State Board of Education (SBOE) and the Texas Higher Education Coordinating Board (THECB). The purpose of the centers is to integrate technology and innovative teaching practices into the preservice and staff development training of teachers and administrators. Approval of a center for professional development and technology shall be based on the following requirements.

(1) The center is established by one or more institutions of higher education with approved teacher education programs through a collaborative process involving public schools, regional education service centers, and other entities or businesses.

(2) The center shall develop and implement comprehensive field-based teacher education programs and/or activities and services.

(3) The center is designed on the basis of current research in:

(A) state-of-the-art teaching practices;

(B) curriculum and instructional knowledge and application that includes strategies to work with culturally diverse populations;

(C) evaluation of student and teacher outcomes; and

(D) the effective application of technology.

(4) The center has rigorous internal and external evaluation procedures that focus on teacher and student outcomes, program content, and delivery systems.

(b) Requirements for an approved plan. Through the collaborative described in subsection (a)(1) of this section, a plan shall be submitted to the SBOE for approval of a center prior to implementation of a center. The collaboratively developed plan must reflect commitment to the:

(1) dedication of the center to addressing the educational needs of all children, especially those in low-performing school sites;

(2) recognition of the authority of each collaborative center group to design, implement, operate, and evaluate all aspects of the center;

(3) contributions of faculty and administrative staff through field-based practice in centers as a form of legitimate scholarship in support of the mission of the institution of higher education;

(4) establishment of organizational and administrative structures to support the collaborative center;

(5) inclusion of funding and resource allocations for the establishment, implementation, evaluation, and maintenance of the center;

(6) designation of program delivery systems with adequate qualified staff to ensure appropriate planning, training, and evaluation;

(7) development of written agreements defining the terms and levels of commitments of all entities in the collaborative group as listed in subsection (a)(1) of this section;

(8) establishment of a governance structure that:

(A) includes teachers, administrators, education service center staff, faculty and administrators from institutions of higher education, and persons from other entities or businesses;

(B) reflects the cultural diversity of the state; and

(C) requires that no one category representation shall be larger than the K-12 teacher representation;

(9) development of policies and practices for restructuring teacher preservice preparation and staff development that focus on outcomes for teachers, and include:

(A) mission, goals, objectives, and outcomes;

(B) participants, personnel, and management;

(C) program design, delivery, and expenditures; and

(D) evaluations and results; and

(10) development of a calendar of scheduled activities for the year(s) for which programs, activities, and services are approved, and a time line for accepting candidates into the center programs.

(c) Characteristics of approved centers. Each approved center for professional development and technology shall:

(1) implement programs, activities, and/or services that are field-based in one or more public schools and provide experiences in public schools that reflect diverse cultural, socioeconomic, and grade level environments;

(2) use current research relating to state-of-the-art best practices that focuses on teaching/learning through a planned se-

quence of experiences that integrates knowledge with application, and implements current best practices that focus on student achievement in areas such as, but not limited to:

- (A) shared decision-making;
- (B) problem solving;
- (C) classroom and discipline management;
- (D) strategies for understanding and working with culturally diverse populations; and
- (E) subject matter and pedagogical content;

(3) integrate the use of technology with effective teaching practices, including preservice preparation programs that provide instruction in technological competencies such as those identified by the International Society for Technology in Education (ISTE);

(4) provide programs, activities, and services that are focused on enhancing student and teacher outcomes, including:

(A) evidence that the professional development outcomes are collaboratively developed, based on current research and best practice, and undergo continual review; and

(B) evidence that the campus improvement plan(s) at field-based school site(s) have been integrated into the center's evaluation design; and

(5) provide continuous, rigorous internal and external evaluation strategies that include all constituent partners in the qualitative and quantitative assessment of student and teacher outcomes, including, but not limited to, evaluation strategies that address:

(A) measures that include the assessment of learner outcomes in the school site using the academic excellence indicator system (AEIS);

(B) basic skills in mathematics, reading, and writing as evidenced by acceptable scores on the state-mandated basic skills test required for all center preservice teacher candidates;

(C) successful performance on appropriate state-adopted examination(s) required for all certification candidates;

(D) performance evaluations of the program's students using a variety of assessments; and

(E) full appraisal requirements of the state and local district for the program's students.

(d) Authority for comprehensive field-based teacher education programs offered through approved centers. Centers for professional development and technology that are in accord with subsections (a)-(c) of this section and are approved by the SBOE may propose for approval comprehensive field-based teacher education programs to supplement the limitations set in the Texas Education Code, §13.036(b).

(e) Requirements for funding of approved centers. Centers for professional development and technology that are in accord with subsections (a)-(c) of this section and approved by the SBOE are eligible to make application to the board for competitive grants from funds derived from gifts, grants, and legislative appropriations for the purposes outlined in subsection (f) of this section. Competitive grants may be made to centers by geographical areas in order to provide programs, activities, and services throughout the state.

(f) Programs, activities, and services of the centers.

(1) Centers for professional development and technology that are in accord with subsections (a)-(c) of this section and are approved by the board may provide preservice and professional staff development for teachers and administrators that:

(A) assists in the development of strategies for the achievement of academic excellence and for relating campus performance objectives to student outcomes;

(B) promotes effective teaching practices that incorporate technology and technological applications; and

(C) coordinates with the textbook adoption cycle and the restructuring of the public school curriculum.

(2) Approved centers with preservice and professional staff development for teachers and administrators may target one or more programs for the recruitment, training, or retraining of minorities and other persons as teachers in subject areas for which there is a shortage of teachers.

(3) Approved centers with preservice and professional staff develop-

ment for teachers and administrators may provide specialized summer institutes such as, but not limited to:

(A) effective application of technology;

(B) innovative and visionary strategies for effective teaching;

(C) district-level and campus-level collaborative decision-making that focuses on student achievement;

(D) site-based management for teachers, administrators, and school board trustees that focuses on student achievement; or

(E) technical writing and the development of innovative grant proposals.

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

Issued in Austin, Texas on April 16, 1992.

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 38. Chronically Ill and Disabled Children's Services

• 25 TAC §§38.3, 38.4, 38.7, 38.10-38.12

(Editor's Note: The Texas Department of Health filed with the Texas Register on April 20, 1992, proposed amendments to §§38.3, 38.4, 38.7, 38.10-38.12. Due to technical problems the amendments were not published in the April 24, 1992, issue of the Texas Register. The proposed date of adoption is June 27, 1992.)

The Texas Department of Health (department) proposes amendments to §§38.3, 38.4, 38.7, 38.10-38.12, the Chronically Ill and Disabled Children's (CIDC) Services Program. The sections cover eligibility for client services, covered services, ambulatory surgical care facilities, cardiac outreach clinic guidelines, guidelines for a cardiac center to be approved through the Chronically Ill and Disabled Children's (CIDC) Services Program, and bone marrow transplant center

guidelines. The amendments will modify determination of the applicant's income who is over the age of 18; extend the period of temporary eligibility for medicaid eligible clients from 45 days to 60 days (The 45-day period for temporary eligibility is inadequate and has the potential to create a gap in services for CIDC eligible clients); clarify that the requirement for the orthotists and prosthetists to be certified by the American Board for Certification in Orthotics and Prosthetics will be for those providers enrolled after November 1, 1991 (Providers enrolled before November 1, 1991 will not be required to be certified); and the provisions regarding ambulatory surgical centers, cardiac outreach clinic guidelines, cardiac center guidelines, and bone marrow transplant center guidelines will be changes to eliminate the references to the CIDC advisory committees (The CIDC advisory committees' structure and functions have been changed by the Texas Board of Health and the advisory committees will no longer be a part of the monitoring of CIDC specialty centers. The department's CIDC Program will be responsible for monitoring the qualifications of the CIDC specialty centers).

Stephen Seale, Chief Accountant III, Budget Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to allow an adequate amount of time for CIDC clients to apply for medicaid eligibility (thus saving state funds), to allow clients over 18 years old to qualify with their own incomes and to assure the quality of CIDC approved orthotists, prosthetists, and specialty centers. There is no anticipated effect on small businesses; or persons who may be required to comply with the sections as proposed; and there will be no effect on local employment.

Oral and written comments on the proposal may be submitted to John E. Evans, Chief, Bureau of Chronically Ill and Disabled Children's (CIDC) Services Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7355. Public comments will be accepted for 30 days after the publication of the amendments in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, Chapter 35, which provides the Texas Board of Health with the authority to adopt rules concerning the Chronically Ill and Disabled Children's (CIDC) Services Program; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§38.3. Eligibility for Client Services. In order for an individual to be eligible for the Chronically Ill and Disabled Children's Services (CIDC) Program, the individual must

meet the medical, financial, and other criteria in this section.

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

(3) Financial criteria. Financial need is established on the basis of household income and assets which are legally available to the family.

(A) Household income.

(i) (No change.)

(ii) Income includes earned wages, pensions or allotments, child support payments, alimony, or any monies received on a regular basis for support purposes. Supplementary security income (SSI) for the disabled child is not included as income. Verification of income will be required as set out in paragraph (8) of this section. If the applicant is over the age of 18, is not in school, and has been gainfully employed and/or [and] is living independently, eligibility will be determined by the applicant's income.

(iii)-(iv) (No change.)

(v) Applicants who appear to be financially eligible for Medicaid and meet all other CIDC Program requirements will be given temporary eligibility for 60 [45] days. During that time the applicant must apply for Medicaid and notify the CIDC Program of Medicaid's determination. If the applicant fails to follow-with the Medicaid application, eligibility will automatically expire at the end of 60 [45] days.

(B) (No change.)

(4)-(9) (No change.)

§38.4. Covered Services.

(a) (No change.)

(b) Types of assistance.

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

(3) Rehabilitation services. As defined by the Chronically Ill and Disabled Children's Services Act (Act), rehabilitation services means a process of physical restoration of body functions destroyed or impaired by congenital defect, disease, or injury, including hospitalization; medical and dental care; braces; artificial appliances; durable medical equipment; medical supplies; and occupational, physical and speech language therapy. To be eligible for CIDC Program reimbursement, the treatment phase must be for a condition included in §38.3(1) (B) of this title (relating to Eligibility for Client Services) and may be determined by a treatment plan which will need periodic updating, depending on the condition. The CIDC Program may establish criteria to determine the necessity of updating plans. Upon Texas Board of Health (board) approval, services may be limited.

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

(E) Orthotic and prosthetic devices. Orthotic and prosthetic devices must be prescribed by a physician, dentist, or podiatrist for a condition covered by the CIDC Program, and supplied by an orthotist or prosthetist certified by the American Board for Certification in Orthotics and Prosthetics for all providers enrolled after November 1, 1991.

(F)-(J) (No change.)

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

(c)-(f) (No change.)

§38.7. Ambulatory Surgical Care Facilities.

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

(d) Application procedures will be as follows.

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

(4) Any ASC facility which disagrees with the result of the CIDC Program's review may appeal the decision through one of the following processes:

(A) administrative review by the CIDC Program staff; or

(B) review by the CIDC Program's General Advisory Committee; and/or]

(B)[(C)] a due process hearing in accordance with the requirements in §38.16 of this title (relating to Right of Appeal).

(e) (No change.)

§38.10. Cardiac Outreach Clinic Guidelines. These guidelines are subject to review and periodic revision by the Chronically Ill and Disabled Children's Services (CIDC) Program staff [CIDC Program staff and the cardiovascular Advisory Committee (CVAC)].

(1) (No change.)

(2) Staff.

(A) The clinic must have the following staff as a minimum:

(i) (No change.)

(ii) an outreach physician who shall be a CIDC Program approved board certified pediatric cardiologist who is responsible for supervising the clinic, conducting the client assessment, screening, developing the client's individualized care

plan, making appropriate recommendations for referral when necessary, sending a follow-up letter to the referral source, and maintaining appropriate medical records on the clients. The CIDC Program [CVAC] will review any request for exception to this criteria for the outreach physician. It is strongly recommended that outreach physicians come from secondary or tertiary centers in closest geographic proximity to the community for ease of access;

(iii)-(iv) (No change.)

(B) (No change.)

(3)-(10) (No change.)

(11) Outreach clinic application process for initial and continued approval. The CIDC Program will use the following process to determine initial approval of clinics. Every three years a CIDC Program approved clinic must resubmit an application proposal for consideration of continued approval. In addition to the application proposal, the CIDC Program will review the clinic's annual reports and any on-site visit information available. If the clinic no longer meets the guidelines, approval may be discontinued. If concerns exist regarding quality of care, staff, facility, or justification issues, the CIDC Program [with input from the CVAC] shall decide the status of the clinic until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process. The CIDC Program will inform the clinic as to whether or not approval is continued.

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

(C) CIDC Program review. The proposal and department regional review staff information will be submitted to the CIDC Program for review. [The proposal and regional information (and annual reports and on-site visit information if the review is for continued approval) will be shared with the CVAC.] The CIDC Program will determine clinic approval/disapproval based on proposal content, and the input from the regional staff [and the recommendations of the CVAC]. The CIDC Program funding of the clinic will depend upon the clinic's budget request and CIDC Program availability of funds in accordance with paragraph (12) of this section.

(12) (No change.)

§38.11. Guidelines for a Cardiac Center To Be Approved through the Chronically Ill and Disabled Children's (CIDC) Services Program.

(a) (No change.)

(b) Approval as a Chronically Ill

and Disabled Children's (CIDC) Services Program cardiovascular diagnostic and treatment center.

(1) Initial or continuing approval process.

(A) Centers making new application for approval will be reviewed by the Texas Department of Health (department) CIDC Program [Cardiovascular Advisory Committee (CVAC)] according to the guidelines in this section, with particular attention paid to quantitative data such as number of live births required in the center's catchment area, number of staff, number of procedures, caseload numbers, number of catheterizations (excluding electrophysiologic studies) that go to surgery, etc. Also, the centers must meet the requirements in the guidelines in this section concerning administration and facilities. The CIDC Program [CVAC] will emphasize geographic need in the approval of new centers.

(B) Prior to initial approval, all centers are subject to a site visit in which the centers and their quality of care are assessed according to the guidelines in this section. If a center is approved, the approval will be for a period of three years, subject to a review of the quality of care at that center based on review of site visit reports and morbidity/mortality data by the CIDC Program [CVAC]. Approval periods may be less than three years if specified by the CIDC Program [CVAC] and approved by the board.

(C) At the time of the review, a written invitation shall be sent to the administrator of the center to attend and/or present information required in the review process. Recommendations from the CIDC Program staff [CIDC CVAC] for initial approval, continuing approval or disapproval shall be sent through the chief, Bureau of Chronically Ill and Disabled Children's (CIDC) Services, to the board for its consideration.

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

(c)-(e) (No change.)

(f) Continuing approval.

(1) The guidelines in this section for approval of a center for the cardiac care of children are intended to ensure that a very high quality of care is delivered. It is expected that a center meet a majority of the criteria set out in the guidelines in this section before making application for approval. The final decision by the board regarding approval shall be made upon the recommendation of the CIDC Program [CVAC] after it has carefully reviewed the documentation submitted, and has been

convinced that the applying center is capable of meeting these standards. Once the center has been approved, its ongoing approval will only depend on its demonstrated ability to continue to maintain the high standards expected. This ability will be verified by periodic site visits by a team made up of approved CIDC physicians [, who may or may not be CIDC CVAC members].

(2) Continuation of approved centers will be based on a qualitative and quantitative assessment. Quality will be assessed by annual reports, if possible, and on-site visits will be evaluated on the basis of the CIDC Program's [Program CVAC's] expertise. The quality of care and services will be determined according to competency of personnel; adequacy of the facility; quality of diagnostic/therapeutic measures; and documentation of results of short- and long-term follow-up, clients outcomes, and mortality statistics for the previous year.

(3) (No change.)

(4) The CIDC Program [CVAC] will make site visits every three years to approved cardiac centers or more often if so specified.

(5) If a center is found to be deficient or have problems in certain areas, the CIDC Program [CVAC] will make a recommendation, which shall include the status of the center until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process.

§38.12. Bone Marrow Transplant Center Guidelines. The following minimum guidelines for bone marrow transplant centers have been established to assure that children and young adults, whose medical conditions justify the need of bone marrow transplantation, receive quality comprehensive services. Bone marrow transplant centers in Texas must meet the guidelines of this section to be approved by the Chronically Ill and Disabled Children's Services (CIDC) Program for funding.

(1) Approval as a CIDC Program bone marrow transplant center.

(A) (No change.)

(B) Continuing approval process.

(i) (No change.)

(ii) If the on-site visit generates concerns regarding the center's quality of care, staff, or facility, the annual reports and on-site review team report(s) will be submitted to the CIDC administrative staff [General Advisory Committee (GAC)]. The CIDC Program administra-

tive staff [GAC] will make a recommendation which shall include: the status of the center until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process.

(iii) (No change.)

(2) On-site visits. On-site visits made by the CIDC Program will assess a center's quality of care and adherence to the guidelines of this section. At the time of the site visit the center must submit documentation that the guidelines of this section are met.

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

(D) Written report. The on-site review team shall submit a written report to the CIDC Program in a format specified by the CIDC Program. The CIDC Program shall share the report with the center [and the CIDC General Advisory Committee].

(3) -(7) (No change.)

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

Issued in Austin, Texas, on April 20, 1992.

TRD-9205466 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 458-7355

◆ ◆ ◆
**Chapter 289. Occupational
Health and Radiation
Control**

**Asbestos Exposure Abatement
in Public Buildings**

- 25 TAC §§289. 141-289.144,
289.147-289.151, 289.156-289.157

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Health (department) proposes the repeal of §§289.141-289.144, 289.147-289.151, and 289.156-289.157, concerning asbestos exposure abatement in public buildings. The sections will be replaced by new sections concerning Texas asbestos health protection in Chapter 295 of this title concerning occupational health, which are being proposed for adoption in this issue of the *Texas Register*.

The existing sections are being proposed for repeal and replacement by new sections in Chapter 295 in order to implement recent amendments in Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, to Texas Civil Statutes, Article 4477-3a, which is the state law covering asbestos abatement.

Stephen Seale, Chief Accountant III, Budget Office, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state and local government for administering or enforcing the repeals.

Mr. Seale also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeal will be the replacement of existing rules by new, updated and more comprehensive rules on asbestos abatement. There will be no cost to small or large businesses; persons who are required to comply with the sections; and there will be no impact on local employment.

Written comments on the proposed repeal may be made to Mr. Jerry F. Lauderdale, Director, Division of Occupational Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600. Comments on these sections will be accepted through May 31, 1992.

The repeals are proposed under Texas Civil Statutes, Article 4477-3a, §11, which provides the Texas Board of Health with the authority to adopt rules covering asbestos removal or encapsulation, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Article 4477-3a; and Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.141. *General Provisions.*

§289.142. *Definitions.*

§289.143. *Licensure.*

§289.144. *Licensing Standards.*

§289.147. *Abatement Notification, Plans Review, Inspections.*

§289.148. *Reprimand, Suspension, and Revocation.*

§289.149. *Registration of Employees as Asbestos Workers.*

§289.150. *Training Courses for Licensure and for Registration.*

§289.151. *Work Practices for Asbestos-Related Activities.*

§289.156. *Asbestos Waste Disposal.*

§289.157. *Processing of Licenses and Certificates for Asbestos Contractors, Abatement Supervisors, and Abatement Workers.*

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

Issued in Austin, Texas, on April 27, 1992.

TRD-9205742 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: June 27, 1992

For further information, please call: (512) 834-6600

◆ ◆ ◆
**Chapter 295. Occupational
[Environmental] Health
Fees for Asbestos Services
[Asbestos Exposure Abate-
ment in Public Buildings]**

The Texas Department of Health (department) proposes an amendment to §295.21, and proposes new §§295.31-295.40, 295.42-295.52, 295.54-295.56, 295.58-295.62, 295.64, 295.65, and 295.67-295.70, concerning fees for asbestos services and Texas Asbestos Health Protection. The new sections will replace existing rules concerning asbestos exposure abatement in public buildings in Chapter 289 of this title, which are being proposed for repeal in this issue of the *Texas Register*. This complete revision of the rules is the result of three public hearings and more than a 100 suggestions received in response to the previously proposed rules that have been withdrawn. The revision contains numerous changes to clarify the requirements and provisions in the rules.

The proposed amendment and new sections will implement the provisions in Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Texas Civil Statutes, Article 4477-3a, concerning asbestos exposure abatement. Section 295.21 concerns fees for asbestos services and the amendments will delete the department's authority to receive samples and to charge a fee for analysis of the samples. The major changes in the new sections are as follows. New categories of licenses will be added, including building inspectors, management planners, consultants, project managers, air monitoring technicians, laboratories, transporters, and trainers. Fees will be assessed to cover the expenses of operating the licensing and enforcement activities. A limited exemption from licensing will be provided for persons removing resilient floor covering materials containing asbestos. Provisions for inspections, investigations, and administrative penalties have been added.

Stephen Seale, Chief Accountant III, Budget Office, has determined that there will be fiscal

implications to state and local government for administering or enforcing the amendment and new sections for each of the first five years that they will be in effect. The state will receive an increase in fee revenue of approximately \$200,000 for each year which will be offset by an expected cost to the state of approximately \$200,000 each year. Local governmental agencies which perform asbestos inspections or management plan development with their own staff will pay fees, but they will be offset by a decrease in fees for supervisors and restricted activity building management that are now being charged under the sections in Chapter 289 being proposed for repeal.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in exposure to asbestos fibers for asbestos project workers and for other persons in public buildings. The resultant reduction in exposure will prevent development of asbestos related illnesses, including asbestos lung cancer, and mesothelioma. Certain businesses will be required to obtain licenses or to employ persons licensed under these rules for the control and abatement of their asbestos. The anticipated increase in cost to businesses will be about \$30 per employee for small businesses and about \$3.00 per employee for large businesses. The costs to persons who are required to comply with the sections will be the fees listed in the new sections. There will be no impact on local employment.

Written comments on the proposed sections may be made to Jerry F. Lauderdale, Director, Division of Occupational Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6600. Comments on these sections will be accepted through May 31, 1992. In addition, the department will conduct a public hearing on the proposal on Friday, May 15, 1992, beginning at 9 a.m., at the Auditorium, Texas Department of Health, 1100 West 49th Street, Austin.

• 25 TAC §295.21

The amendment is proposed under Texas Civil Statutes, Article 4477-3a, §11, which provide the Texas Board of Health with the authority to adopt rules covering asbestos removal or encapsulation, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Article 4477-3a; and Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.21. Fees for Management Plans [Fees for Asbestos Services].

(a) General provisions.

(1) (No change.)

(2) Scope. This section covers fees for the [analysis of materials and airborne samples for the presence or concentration of asbestos, and the] review and approval of asbestos management plans, as submitted.

(3) Statutory authority. The Texas Board of Health (board) is granted authority under the Health and Safety Code, §12.031-12.032 [Texas Civil Statutes, Article 4414c, §2,] to charge fees to persons who receive public health services from the Texas Department of Health (department), which includes environmental and consumer health services.

(4) (No change.)

(5) Review. The board [Board of Health] shall review and approve all changes of the amounts of fees assessed, or any additions to fees for the services set forth in this section.

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

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

[(4) Phase-contrast microscopy—A method of analysis of airborne particulate matter to determine the concentration of fibers, expressed as the number of fibers per cubic centimeter of air.

[(5) Polarized-light microscopy—A method of detecting the presence of asbestos fibers in materials, employing dispersion staining, by noting fiber color change upon rotation of the polarization filters.

[(c) Fees for asbestos analysis.]

[(1) The department may charge a reasonable fee for analyzing bulk samples of materials to determine possible asbestos content, or the concentration of asbestos fibers in airborne samples. The fee for analysis of bulk samples by polarized-light microscopy for the presence of asbestos shall be \$12 per sample. The fee for fiber-count analysis of samples of airborne particulates by phase-contrast microscopy shall be \$16 per sample.

[(2) The department may accept samples for analysis from all agencies of state or local governments, physicians, federal agencies, public or private schools, institutions of higher learning, churches or synagogues, and registered nonprofit organizations. The department shall not accept requests for such services from commercial or industrial establishments, or from individuals.

[(3) The department may refuse to accept samples submitted for analysis that are not correctly prepared, packaged, or identified according to department requirements. The department shall refuse to accept samples submitted without proper provisions for payment. The department is not required to accept samples in lots of excessive size. The department may assign priorities at its discretion to samples submitted under the provisions of this section.

[(4) Collected fees for analysis services shall be apportioned equally between the subdivisions of the department which perform the analytical and the administrative procedures for asbestos samples.

[(5) The department may, at its discretion, waive fees for samples submitted for analysis as a result of investigations initiated by the department, the Texas Air Control Board, and local health departments.]

(c)[(d)] Fees for plans review.

(1) The department may collect a reasonable fee for the review and approval of plans affecting the control and abatement of asbestos or asbestos containing materials (ACM). The fee determined for the review process for each asbestos plan, or partial plan, submitted under the provisions of this subsection shall be the greater of \$75 or 1/10 of a cent (\$.001) per square foot of the total building area under review.

(2) Parts of an entire asbestos plan may be submitted separately for facilities in separate locations. Each partial submission shall be subject to the fees set forth in paragraph (1) of this subsection [(concerning fees for the review and approval of plans)].

(3) The department may refuse or return asbestos plans that are found to be incomplete or not correctly prepared. The department may, at its election, hold documents pending notification to the sender of the required corrections or completions by mail. If the department has not received the required corrections or completions, or any necessary explanation thereof, within 30 days of the date of mailing the letter of requirements to the sender, the department may return or discard the plans or specifications.

(4) The department shall complete the [The] review process [shall be completed] within 90 days of the date of acceptance by the department of an asbestos plan in an essentially complete and correct form.

(5) The department shall refuse to accept or review plans submitted without proper provisions for payment. Fees for plans accepted by the department for the review process are not refundable.

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

Issued in Austin, Texas, on April 27, 1992.

TRD-9205743

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

Proposed date of adoption: June 27, 1992

For further information, please call: (512) 834-6600

Texas Asbestos Health Protection

- 25 TAC §§295.31-295.40, 295.42-295.52, 295.54-295.56, 295.58-295.62, 295.64-295.65, 295.67-295.70

The new sections are being proposed under Texas Civil Statutes, Article 4477-3a, §11, which provides the Board of Health with the authority to adopt rules covering asbestos removal or encapsulation, including licensing and regulation; Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, which amended Article 4477-3a; and Health and Safety Code, §12.001 which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

§295.31. General Provisions.

(a) Problem. In more than 25 years of research into the relationship between airborne asbestos fibers and the diseases such exposure can cause, the bodily mechanism by which inhaled asbestos fibers initiate cancer or asbestosis is still not understood, no effective treatment has been found, and the only means of preventing asbestos disease depends entirely on limiting the exposure of the individual to asbestos fibers.

(b) Purpose. The purpose of these sections is to establish the means of control and minimization of public exposure to airborne asbestos fibers, a known carcinogen and dangerous health hazard, by regulating asbestos disturbance activities in buildings that afford public access or occupancy.

(c) Scope. These sections apply to all buildings which are subject to public occupancy or to which the general public has access, and to all individuals or organizations removing asbestos, encapsulating asbestos, or enclosing asbestos, in public buildings for any purpose, including repair, renovation, dismantling, demolition, installations or maintenance operations, or any other activity that may involve the disturbance or removal of asbestos containing material (ACM). Also included are the qualifications for accreditation of these individuals and organizations, and for compliance with these sections and all applicable standards of the United States Environmental Protection Agency and the United States Occupational Safety and Health Administration.

(d) Exclusions. Industrial or manufacturing facilities, those to which access is controlled and limited principally to employees therein because of processes or

functions dangerous to human health and safety are excluded from coverage of these sections. Private residences, federal buildings, military installations, and apartment buildings with no more than four dwelling units are also excluded.

(e) Severability. Should any section in these sections be found to be void for any reason, such finding shall not affect all other sections.

(f) Implementation. Upon adoption, the department will receive applications and begin issuing licenses. As of January 1, 1993, the department shall enforce the licensing and registration requirements of these sections. Existing licenses shall be valid until they expire, at which time they must be renewed under these sections. Workers registered before January 1, 1993, must renew their registration in 1993 in the month shown on their original registration certificate, and annually thereafter.

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

Asbestos containing material (ACM)—Materials or products that contain more than 1.0% of any kind or combination of mineral asbestos, as determined by Environmental Protection Agency (EPA) recommended methods.

Act—The Texas Asbestos Health Protection Act, Texas Civil Statutes, Article 4477-3a, as amended.

Air monitoring—The collection of airborne samples for analysis of asbestos fibers.

AHERA—Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519. The act amends the Federal Toxic Substances Control Act, 15 United States Code, §2641, et seq., by requiring an inspection of all school buildings (Grades K-12), all school administrations to develop plans for controlling asbestos in or removing asbestos from school buildings, and providing penalties for non-compliance.

AIHA—The American Industrial Hygiene Association

Asbestos—The asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite and all materials containing one percent or more of any of those substances.

Asbestos abatement—The removal, the encapsulation or the enclosure of asbestos for the purpose of, that has the effect of, reducing or eliminating airborne concentrations of asbestos fibers or amounts of ACM.

Asbestos abatement contractor—A person who undertakes to perform asbestos removal, enclosure, or encapsulation for others under contract or other agreement.

Asbestos abatement supervisor—An individual who is in the direct and responsi-

ble charge of the personnel, practices, and procedures of an asbestos abatement operation or project.

Asbestos exposure—Airborne asbestos fiber concentrations resulting from disturbance or deterioration of asbestos or asbestos containing material (ACM).

Asbestos project design—Asbestos abatement project design includes the inspection of public buildings for asbestos containing material (ACM), the evaluation and selection of appropriate asbestos abatement methods, project layout, the preparation of plans, specifications and contract documents, and the review of environmental controls, abatement procedures and personal protection equipment employed during the project.

Asbestos-related activity—The removal, encapsulation, or enclosure of asbestos, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.

Asbestos removal—Any action that dislodges, strips, or otherwise takes away asbestos containing material (ACM).

Asbestos survey—A comprehensive inspection of a building or facility to determine the location, quantity, and condition of asbestos containing material (ACM) therein.

Board—The Texas Board of Health.

Building owner—The owner of record of any public building.

CFR—The Code of Federal Regulations.

Commissioner—The Texas Commissioner of Health.

Competent person—The individual designated as the competent person as required by the United States Occupational and Health Administration regulations in 29 CFR, §1926.58.

Demolition—Operations in which load-bearing structural members of a building are wrecked or removed.

Department—The Texas Department of Health.

Encapsulation—A method of control of asbestos fibers in which the surface of asbestos containing material (ACM) is penetrated by or covered with a liquid coating prepared for that purpose.

Enclosure—The construction of an airtight, impermeable, permanent barrier surrounding asbestos to prevent the release of asbestos fibers into the air.

EPA—The United States Environmental Protection Agency.

Friable material—Materials that when dry can be crumbled, pulverized, or reduced to powder by hand pressure.

HEPA—A high-efficiency particulate air filter, capable of trapping and retaining 99.97% of mono-dispersed airborne particles 0.3 micron or larger in diameter.

HVAC—Heating, ventilation, and air conditioning systems.

Independent third-party monitor—A person retained to collect air samples to be analyzed by and for the owner of the building or facility being abated. The person must not be employed by the contractor to analyze any area samples collected during the abatement projects.

Individual—A single person acting of and for his or herself.

Licensee—A person who meets all qualifications and has been issued a license by the Texas Department of Health in accordance with these sections.

Management plan—A written plan describing appropriate actions for surveillance and management of asbestos containing material (ACM).

Model accreditation plan—A United States Environmental Protection Agency plan which provides standards for initial training, examinations, refresher training courses, applicant qualifications, decertification, and reciprocity, as described in Title 40, CFR, Part 763, Subpart E, Appendix C.

NESHAP—The United States Environmental Protection Agency National Emissions Standards for Hazardous Air Pollutants, as described in Title 40, CFR, Part 61.

NIOSH—The National Institute of Occupational Safety and Health.

NVLAP—The National Voluntary Laboratory Accreditation Program.

Operations and maintenance (O&M)—Operations and maintenance activities are restricted to small-scale, short-duration work practices and engineering controls for tasks that result in the disturbance, dislodgement, or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations (Title 29, CFR, §1926.58, Appendix G, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation, and Maintenance Activities").

OSHA—The Occupational Safety and Health Administration of the United States Department of Labor.

PAT—Proficiency Analytical Testing.

PCM—Phase-contrast microscopy, a method of analysis for overall airborne fiber counts using an optical microscope.

PLM—Polarized-light microscopy, a method of analysis for detection of the presence and type of asbestos.

Person—A person is defined in the law as:

(A) an individual;

(B) an organization such as a corporation, partnership, sole proprietorship, governmental subdivision, or agency; or

(C) any other legal entity recognized by law as the subject of rights and duties.

Public building—A building used or to be used for purposes that provide for public access or occupancy. The term includes any building during a period of vacancy, including during preparations prior to actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with no more than four dwelling units; or

(E) a manufacturing facility or building that is limited to workers and invited guests under controlled conditions.

Regulated area—The demarcated area in which asbestos abatement activity takes place, and in which the possibility of exceeding the permissible exposure limits (PEL) for concentrations of airborne asbestos exists.

Renovation—Alteration of the interior surfaces of a public building for purposes of restoration by removal, repairing, and for rebuilding.

TEM—Transmission Electron Microscopy.

Transportation of asbestos containing material (ACM)—Moving asbestos materials from one site to another.

Working days—Monday through Friday including holidays which fall on those days.

§295.33. Adoption by Reference of Federal Standards.

(a) Adoption by reference. The Texas Department of Health (department) adopts by reference the following federal requirements in the Code of Federal Regulations (CFR):

(1) 40 CFR Part 61, Subpart M, titled, "National Emissions Standards for Hazardous Air Pollutants;"

(2) 40 CFR Part 763, Subpart G, §§763.120-763.126, titled, "Asbestos Abatement Projects: Worker Protection Rule;"

(3) 40 CFR Part 763, Subpart E, §§763.80-763.99, titled, "Asbestos-Containing Materials in Schools;"

(4) 40 CFR Part 763, Subpart E, Appendix C, titled, "Model Accreditation Plan;"

(5) 40 CFR Part 763, Subpart E, Appendix B, titled, "Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations Maintenance and Repair (O&M) Activities Involving ACM;"

(6) 29 CFR §1926.58, titled, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite";

(7) 29 CFR §1926.58, Appendix G, titled, "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities;" and

(8) 29 CFR §1910.134, titled, "Occupational Health Standards for A Respiratory Protection Program."

(b) Availability. Copies of the documents in subsection (a) of this section are available for review at any licensed training provider or the Texas Department of Health, Division of Occupational Health, 1100 West 49th Street, Austin, and may be reviewed during normal business hours.

(c) State versus federal standards. In certain instances the state requirements in the Texas Health Asbestos Protection Act and/or these sections will be more stringent than the federal standards listed in subsection (a) of this section. In such cases the state requirements shall prevail.

§295.34. Asbestos Management in Public Buildings.

(a) Statement of responsibility. The building owner of record retains the responsibility for the presence, the condition, the disturbance, and the disposal of any asbestos to be found in the construction or furnishing of that building, including:

(1) the responsibility for the periods of building vacancy and all preparations prior to actual demolition;

(2) the obligation to inform those who enter the building for purposes of construction, maintenance, installation, repairs, etc., of the presence and location of asbestos, and to arrange for removal of any asbestos that would be disturbed or dislodged by such activity; and

(3) management or activity by others, including lessees or agents, for asbestos or any activity affecting asbestos in that building.

(b) Mandatory survey. A building owner must have that building surveyed by a licensed asbestos inspector prior to any renovation or dismantling within the building, including preparations for demolition, as required by 40 Code of Federal Regula-

tions, §61.145. This requirement does not pertain to schools which already have been inspected and have management plans, each done by a certified inspector, prior to July 1, 1992.

(c) Asbestos control and abatement. A building owner has the following options for dealing with the asbestos found in his buildings:

(1) a building owner may hire an asbestos abatement contractor to perform any or all asbestos operations and maintenance (O&M), abatement, or cleanup in his building(s);

(2) a building owner may perform asbestos O&M for his own account if he obtains an asbestos building management (restricted) license, which is restricted to buildings under his ownership. To be approved for this license, the building owner is required to be or to employ at least one licensed O&M supervisor (restricted) and as many restricted asbestos workers as necessary for the asbestos O&M activities to be performed under this license; or

(3) a building owner may perform asbestos abatement projects, including asbestos O&M activities, if he obtains an asbestos abatement contractor's license, as described in §295.45 of this title (relating to Licensure: Asbestos Abatement Contractor).

(d) Prohibition. The owner of a public building who contracts with or otherwise permits any individual or organization without appropriate valid license or registration to perform any asbestos-related activity in that building is subject to administrative or civil penalty under the Texas Asbestos Health Protection Act which may not to exceed \$10,000 a day for each violation.

(e) Mandatory notification. A notification of intent to abate asbestos must be submitted to the Texas Department of Health (department) by the building owner or his designated agent at least 10 working days prior to the start date of the abatement project as described in §295.61 of this title (relating to Operations: Notifications).

(f) Mandatory abatement - project design. Abatement projects which have a combined amount of asbestos exceeding 160 square feet of surface area, or 260 linear feet of pipe length, or one cubic yard of material to be removed from a building component require that the project be designed by a licensed asbestos consultant.

(g) Requirement for asbestos in poor condition. If, in the opinion of the department following an asbestos site inspection of a public building, there appears to be a danger or potential danger to the occupants of a building, workers in a building, or the general public, the department shall require the building owner or authorized representative to complete an immedi-

ate survey for asbestos by a licensed asbestos inspector.

(h) Requirement for management plan. Where asbestos is found in a public building, as a result of an inspection performed under subsection (g) of this section, a written management plan must be developed by a licensed asbestos management planner that identifies, locates, and assesses the condition of that asbestos. The plan shall include a schedule to periodically reinspect for changes in the condition of the materials containing asbestos and for conducting operations and maintenance activities within the building so as to minimize the potential for release of asbestos fibers. Copies of the plan shall be submitted to the department and shall be on file with the owner, management, and any employee in charge of building operations and maintenance.

§295.35. Licensing and Registration: Conditions.

(a) Licensing requirement. A person must be appropriately licensed or registered in compliance with these sections to engage in asbestos abatement or any asbestos-related activity within the scope of these sections.

(b) Age requirement. Each individual desiring to be licensed or registered under these sections must be 18 years old prior to submitting an application for such purpose.

(c) Term and expiration. The term of all licenses, including the registration of asbestos workers, is one year and expires on the anniversary of the effective date, unless renewed.

(d) Provision for change. The terms and conditions of all licenses or registration shall be subject at any time to revision, amendment, or modification by rules or orders issued by the Texas Department of Health (department).

(e) Condition of issuance. No license or worker registration issued under these sections may be sold, assigned, or transferred.

(f) Responsibilities of licensees. Licensees who become aware of violations of these sections must report these violations to the department if the violations are not immediately corrected by the responsible party.

§295.36. Licensing and Registration: Exemptions.

(a) Exemption requirements. Those who remove resilient floor coverings materials in public buildings are exempt from the licensing and registration requirements of these sections provided that:

(1) floor materials and their adhesive (mastic) are analyzed for asbestos content prior to removal;

(2) all those engaged in removal of resilient floor coverings shall have received training in an eight-hour course which covers the elements described in the document titled, "Recommended Work Practices for the Removal of Resilient Floor Coverings", published by the Resilient Floor Covering Institute;

(3) employees of schools (kindergarten through 12th grade) who elect to use this exempt method must first complete the 16-hour custodial training, as required by federal regulations adopted under authority of the Asbestos Hazard Emergency Response Act of 1986 (AHERA). Possession of a valid worker registration or supervisor license eliminates the individual's need for the 16-hour training; and

(4) the actual removal of floor coverings and adhesive under this exemption is limited to the exempted method of removal and must be conducted according to the work practices recommended by the Resilient Floor Covering Institute.

(b) Notification required. The Texas Department of Health (department) shall be notified by mail at least 10 working days prior to commencing any removal of floor coverings from public buildings permitted under the terms of this exemption, as required in §295.61 of this title (relating to Operations: Notifications).

(c) Limitations of exemption. The asbestos activity permitted by the exemption under the Texas Asbestos Health Protection Act (Act), §15A, relating to the removal of resilient floor covering, does not apply to any other asbestos-related activity, nor does the training or experience gained from such practices qualify for any other asbestos-related activity.

(d) Failure to comply. Persons who intentionally fail to comply with subsection (a) (1)-(4) of this section are subject to a civil penalty of not more than \$5,000. Persons who fail to comply with notification requirements, or other applicable sections of the Act or rules, are subject to administrative, civil, or criminal penalties as provided by the Act.

(e) Abatement emergency. In an abatement emergency that results from a sudden, unexpected event that is not a planned renovation or demolition the department, on notification, may waive the requirement for a license. Call (512) 834-6600 for consultation about emergencies.

§295.37. Licensing and Registration: Conflict of Interests.

(a) Independent third-party monitoring. Third-party area monitoring for air-

borne concentrations of asbestos fibers during an abatement project shall be done by a person retained to collect samples by and for the owner of the building being abated. Such person must not be employed by the abatement contractor, or by any agency affiliated with the abatement contractor. (This restriction does not apply to personal samples taken to evaluate worker's exposures as required by the Occupational Safety and Health Administration of the United States Department of Labor or the Environmental Protection Agency.)

(b) Licensee conflict of interest. Any person licensed according to these sections to perform asbestos surveys, write management plans, or design asbestos abatement projects under a contract or other hire agreement shall not also engage in the removal of asbestos from those buildings.

§295.38. Licensing and Registration: Applications and Renewals.

(a) General requirements. Applications for a license under these sections must be made on forms provided by the Texas Department of Health (department), shall be signed by the applicant, and must be accompanied by a check or money order for the amount of the license or renewal fee. Only applications which are complete shall be considered by the department.

(b) Inquiries. Potential applicants who wish to discuss or obtain information concerning qualification requirements may do so by calling the department's Asbestos Programs Branch at (512) 834-6600.

(c) Denials. The department may deny an application for licensing, registration, or renewal to any applicant who fails to meet the standards established by these sections, including, but not limited to:

(1) past history of substantial violations of these sections by the applicant and/or the applicant's employees or agents, as demonstrated by the departments' issuance of administrative orders, court judgments, or similar actions by other federal or state agencies;

(2) evidence that the applicant cannot be legally employed in the United States;

(3) fraud or deception in obtaining, attempting to obtain, or renewing a license or registration;

(4) failure to submit the required information and/or documentation within 90 days of a written request by the department;

(5) failure to submit the required fee;

(6) failure at any time to comply with the provisions of these sections;

(7) failure to maintain or to permit inspection of the records required of all licensees;

(8) employing or permitting an unauthorized person or individual to work on any asbestos project or operation;

(9) engaging or attempting to engage in an asbestos-related activity without a valid license;

(10) failure to comply with any rule adopted by the board or order issued by the department;

(11) failure to provide notice of an asbestos project or operation as required by these sections;

(12) conviction within the past five years of a felony or a misdemeanor (involving fraudulent activities relating to construction or the building trades in general);

(13) failure of a licensee to complete their responsibilities during an asbestos project or operation due to insufficient financial resources;

(14) failure to protect workers from asbestos exposures in excess of the current Permissible Exposure Limit (PEL);

(15) failure to prevent asbestos contamination of areas adjacent to the abatement area; or

(16) failure to decontaminate any part of a facility or its environment, or any persons inadvertently contaminated with asbestos as a result of their actions while exercising their duties under these sections.

(d) Administrative penalty. In accordance with §295.70 of this title (relating to Compliance: Administrative Penalty) an administrative penalty may be assessed for fraud or deception in obtaining, attempting to obtain, or renewing a license or registration.

(e) Processing applications and renewals.

(1) Time periods. Applications for licensure as asbestos contractors, abatement supervisors, and abatement workers shall be processed in accordance with the following time periods.

(A) The first period is a time from the receipt of a written application to the date of issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time period for each application type is 90 days for the initial contractor or supervisor license; 30 days from the renewal of contractor or supervisor license; and 30 days for the abatement worker certificate.

(B) The second period is a time from receipt of the last item necessary to complete the application to the date of

issuance of written notice approving or denying approval of the application. The time period for each application type is 60 days for the initial contractor or supervisor license; 15 days for renewal of the contractor or supervisor license; and 30 days for the abatement worker certification.

(2) Reimbursement of fees. Initial application or renewal fees will be refunded only when the department does not process a completed application in the time period specified, or when fee amounts are incorrect or submitted for the wrong purpose. Otherwise, fees for applications and renewals are not eligible for refund.

(A) Denial of an application, failure to qualify, or abandonment of the application do not constitute grounds for reimbursement. Abandonment is defined as failure to respond to a written request of the department by the applicant for a period of 90 days.

(B) A denial of an application or a request for renewal may be appealed by the applicant. The details for requesting a hearing are included in each letter of denial.

(3) Appeal. If the request for full reimbursement authorized by this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner that he request full reimbursement of all filing fees paid because his application was not processed within the adopted time period. The program administrator shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will determine the final action and provide written notification of his decision to the applicant and the program administrator.

(4) Contested case hearing. If at any time during the processing of the permit during the second time period, a contested case hearing becomes involved, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings) is applicable.

(f) Renewal notices. At least 30 days before a license expires, the department shall send to the licensee, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) the date on which the current license or registration expires;

(2) the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license or registration expires; and

(3) the amount of the renewal fee.

(g) **Renewal requirements.** No sooner than 60 days before the license or registration expires, it may be renewed for an additional one-year term providing that the licensee or worker:

(1) is qualified to be licensed or registered;

(2) pays to the department the proper amount of the non-refundable renewal fee;

(3) submits to the department a renewal application on the prescribed form;

(4) completes successfully the requirements for renewal; and

(5) has complied with all final orders resulting from any violations of these sections.

(h) **Prohibition.** It is illegal to practice with lapsed licenses and registrations regardless of when renewal application is received. Also, licenses which have lapsed for a period exceeding 180 days will not otherwise be renewed. A new application subject to current qualifications is required.

(i) **Replacements.** A licensee or registrant may request a replacement certificate by completion of an appropriate application. The fee for reissuance is \$20.

(j) **Retention of control.** The department may, at any time after the filing of any application and before the expiration of any license or registration, require:

(1) additional written information and assurances; and

(2) cooperation with any inspections initiated by the department, or the production of any documentary or other evidence that the department considers necessary to determine whether the license or registration should be granted, delayed, denied, modified, suspended, or revoked.

§295.39. Licensing and Registration: Out of State Applicants.

(a) **Terms of reciprocity.** Individuals or organizations may enter the State for purposes of asbestos abatement or other asbestos-related activity under the Act provided that they are licensed according to the terms of these sections prior to soliciting business or commencing such activities.

(b) **Applicant status.** Contractors based in other states seeking an initial or renewal license under these sections must comply with all licensing requirements which would be imposed on a Texas contractor seeking licensure in the out-of-state contractor's base state.

(c) **Acceptance of qualifying documents.** Out-of-state education, experience, training, and physical examinations can be

accepted for the purpose of qualifying for Texas licenses provided that they are valid and are verifiable by the department. The burden of proof in such matters is the responsibility of the applicant; the department must reject unverifiable documentation.

(d) **Compulsory training.** All out-of-state licensees must complete a minimum of three hours training on Texas law and regulations affecting asbestos prior to applying for licenses or commencement of any such activity. Licensee organizations must have at least one officer complete this training. This requirement shall be enforced as of June 1, 1993.

(e) **Required documents.** To do business in Texas an out-of-state applicant corporation or other business entity applicant must:

(1) submit a letter or certificate from the Texas Secretary of State authorizing the conduct of business in this state;

(2) submit a sales tax account identification number obtained from the Texas Comptroller of Public Accounts;

(3) submit a certificate of insurance for liability coverage if the applicant is an asbestos abatement contractor, asbestos consultant, asbestos inspector, asbestos laboratory, or asbestos transporter performing work for hire as required by §295.40 (relating to Licensing and Registration: Insurance Requirements); and

(4) provide workers' compensation insurance issued by a company authorized to do business in Texas and written on the Texas form, or evidence of self insurance, when such insurance is required by contract specification or other agreement.

§295.40. Licensing and Registration: Insurance Requirements. Persons required to have insurance must obtain policies for required coverage as specified in these sections, and in the amounts specified, which meet the following requirements.

(1) Applicants for licenses or renewal of licenses must provide to the department the insurance policy or a photocopy of the insurance policy required. The policy must be currently in force, and must be written by an insurance company authorized to do business in Texas or by a surplus lines insurer, as defined by the Insurance Code, Article 1.14-1, and must be written through a licensed Texas agent.

(2) The policy (or photocopy) must be complete, including all applicable coverage forms and endorsements. Certificates of insurance will not be acceptable for this purpose.

(3) In the event of policy cancellation by either the licensee or the insurance company, the licensee shall notify the

department not later than 10 days prior to the cancellation effective date.

(4) In the event of policy cancellation or expiration, the policy shall promptly be replaced or renewed without any lapse in coverage. A copy of the renewal policy must be provided to the department upon receipt by the licensee.

§295.42. Registration: Asbestos Abatement Workers.

(a) **Registration requirement.** Individuals must be registered as asbestos abatement workers in compliance with these sections to perform asbestos abatement work in a public building, including but not limited to transporting, loading or unloading asbestos, or performing any maintenance, repair, installation, renovation or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos material. Registrations are valid for a period of one year from the effective date and are renewable.

(b) **Fee.** The fee for an initial application for an annual renewal of registration of an asbestos abatement worker shall be \$30.00.

(c) **Applications and renewals.** Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 (a) and (d) of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) **Annual renewal.** Asbestos workers who were registered on or before the effective date of this rule, may apply for annual renewal of their registration by completing annual worker refresher training and medical re-examination. The renewal must be issued during the year 1993 no later than the month shown on the original certificate, and annually thereafter.

(e) **Qualifications.** Applicants for registration as asbestos abatement workers shall submit evidence of qualifications with their applications which shall include:

(1) a certificate of training indicating successful completion of an approved 24-hour course for abatement workers or the current annual refresher training course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses). Evidence of successful completion of the contractor/supervisor course may be substituted for the initial worker course;

(2) an acceptable written opinion of a physical examination of the applicant within the past 12 months that was performed by a physician in accordance with Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations in 29

CFR, §1926.58(m), or Environmental Protection Agency (EPA) regulations in 40 CFR, Part 763, Subpart G(m), relating to medical surveillance. This opinion must include certification of the following elements:

(A) completion and review of the standardized medical questionnaire and work history with special emphasis directed to the pulmonary, cardiovascular, and gastrointestinal systems per Appendix D in §1926.58;

(B) the employer provided, and review was made of, the description of the employee's duties as they relate to asbestos exposure, the employee's representative or anticipated exposure level, the personal protective and respiratory equipment to be utilized by the employee, and information from previous medical examinations of the affected employee that is not otherwise available to the physician;

(C) a physical examination with emphasis upon the pulmonary, cardiovascular, and gastrointestinal systems;

(D) the pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV 1) in accordance with NIOSH and ATS standards;

(E) a chest roentgenogram, posterior-anterior, 14x17 inches or current film on file with interpretation in accordance with 29 CFR 1926.58 Appendix E. Note: According to 29 CFR 1926.58(M)(2)(ii)(C), it is up to the discretion of the physician whether or not a chest X-ray is required; and

(F) the employee was informed by the physician of the results of the exam and of any medical conditions that may result from asbestos exposure including the increased risk of lung cancer attributable to the combined effect of smoking and asbestos exposure;

(3) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(h) of this title (relating to Required Asbestos Training Courses) is required; and

(4) a 1" x 1" photograph of the face.

(e) Responsibilities. A registered asbestos abatement worker shall:

(1) comply with standards of operation, including EPA and OSHA regulations, adopted by reference, in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) comply with standards and practices for operations and maintenance activities, as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Requirements); and

(4) cooperate with to department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) Prohibitions. The following specific prohibitions apply to registered asbestos abatement workers.

(1) Asbestos abatement workers are prohibited from performing asbestos abatement or O&M activities affecting asbestos except under the direct supervision of a qualified licensed supervisor.

(2) Asbestos abatement workers are prohibited from engaging in any asbestos-related activity as a supervisor or contractor.

§295.43. Licensure: Asbestos Building Management (Restricted).

(a) Licensing requirement. Buildings owners shall be licensed in order to engage in operations and maintenance (O&M) activities affecting asbestos in any building under their ownership. Asbestos building management (restricted) licenses are valid for a period of one year, and shall be renewable as prescribed in these sections.

(1) O&M activities are restricted to small-scale, short-duration work practices and engineering controls for tasks that result in the disturbance, dislodgement, or removal of asbestos in the course of performing repairs, maintenance, renovation, installation, replacement, or cleanup operations, as described in §295.33(a)(5) of this title (relating to Adoption by Reference of Federal Standards).

(2) Building owners that would have their employees perform operations, maintenance, or repair activities, as described in this subsection, within the buildings that they own must obtain a license as

asbestos building management (restricted) in accordance with this section.

(3) Asbestos O&M activities may be performed by employees of asbestos building management (restricted) licensees who are registered as asbestos workers and supervised by employees who are licensed asbestos O&M supervisors, or asbestos building management licensees may employ other registered workers or licensed supervisors. Asbestos abatement supervisors may be employed as asbestos O&M supervisors or asbestos workers.

(4) Those who perform, under contract or other hire agreement, O&M actions within a public building must be licensed as asbestos abatement contractors.

(5) Whenever asbestos abatement is the primary or principal purpose of any asbestos activity in a public building it must be performed by an asbestos abatement contractor licensed under these sections.

(6) Environmental Protection Agency (EPA) regulatory requirements for small-scale, short duration activities affecting asbestos are explained in detail in 40 CFR, Part 763E, Appendix B, as amended. The same regulatory requirements of Occupational Safety and Health Administration of the United States Department of Labor (OSHA) for these activities are explained in 29 CFR §1926.58, Appendix G. The restricted asbestos activities of licensed building owners or their agents, O&M supervisors and workers shall be confined to the work practices and procedures therein.

(b) Licensee authorization. Asbestos building management (restricted) licensees are also specifically authorized to employ asbestos O&M supervisor (or asbestos abatement supervisors), and asbestos abatement workers who are currently licensed under this section to perform O&M activities that may affect asbestos in those buildings under their control.

(c) Fee. The fee for an initial application or annual renewal of the license shall be \$120.

(d) Applications and renewals. Subject to the provisions of §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Responsibilities. Building owners who obtain an asbestos building management licenses shall be responsible for:

(1) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) complying with federal standards of operation, including EPA and OSHA regulations which are adopted by reference, as follows:

(A) OSHA regulations in 29 CFR, §1926.58, Appendix G, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities"; or

(B) EPA regulations in 40 CFR, Part 763, Subpart E, Appendix B, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Operations, Maintenance and Repair (O&M) Activities Involving ACM;"

(3) employment of at least one licensed O&M supervisor (restricted) to supervise or perform O&M activities. An individual licensed as an asbestos project supervisor or asbestos project manager may be substituted for the O&M supervisor. Employees who are registered asbestos abatement workers shall perform O&M activity only under the direct supervision of either category of supervisors named in this section;

(4) complying with recordkeeping requirements, at both the central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(5) complying with the requirement to notify the department about impending abatement projects, changes requiring re-notification, and emergency notifications, as described in §295.61 of this title (relating to Operations: Notifications);

(6) complying with the requirement to supply and train employees who perform asbestos-related activities in the use of personal protection equipment, and to supervise their compliance;

(7) maintaining the current training status of each employee, according to §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(8) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspection and Investigations); and

(9) providing for the proper temporary storage and for the final disposal of waste asbestos within 30 days of project completion or when receiving container is full, whichever is sooner.

(f) Prohibitions.

(1) Persons obtaining an asbestos building management license are restricted to engaging in any asbestos-related

activity for the building under their control only, and may not engage in any asbestos-related activity, O&M activities, under a contract or other hire agreement.

(2) Asbestos building management licensees shall not engage in any activity for which the primary purpose is asbestos abatement.

§295.44. Licensure: Asbestos Operations and Maintenance Supervisor (Restricted).

(a) Licensing. Individuals employed by building management who directly supervise personnel and work practices in the conduct of operations and maintenance (O&M) activities affecting asbestos containing materials (ACM) shall be licensed as asbestos operations and maintenance supervisors (restricted). Such licenses are valid for a period of one year, and shall be renewable.

(b) Fee. The fee for an initial application or annual renewal license for an asbestos O&M supervisor (restricted) shall be \$90.

(c) Applications and renewals. Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. The applicant for an O&M license shall submit the following:

(1) a certificate of training indicating successful completion of an approved 36-hour course for abatement contractors and project supervisors, or the current annual refresher training course as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(2) an acceptable written opinion of a physical examination as described in §295.42(d)(3) of this title (relating to Registration: Asbestos Abatement Workers);

(3) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(h) of this title (relating to Required Asbestos Training Courses) is required; and

(4) a 1" x 1" photograph of the face.

(e) Responsibilities. The asbestos operations and maintenance supervisor (restricted) shall:

(1) comply with the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations for standards of small-scale, short-duration work practices which are adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with the additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) maintain records at both the central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(4) supply personal protection equipment and train employees who perform asbestos-related activities in the use of equipment, and to supervise their compliance;

(5) comply with standards and practices for O&M activities as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities); and

(6) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) Restrictions and prohibitions. Licensing as an asbestos O&M supervisor is specifically restricted, as follows.

(1) The licensee may be employed only by a licensed building owner or by a licensed asbestos abatement contractor to supervise O&M activities within public buildings, or to perform such work.

(2) The licensee may seek employment as an asbestos abatement worker but may not engage in any other asbestos-related activity for which a license is required.

(3) The licensee may not supervise asbestos abatement projects or act as a contractor.

§295.45. Licensure: Asbestos Abatement Contractor.

(a) Licensing requirement. Persons must be licensed as asbestos abatement contractors in compliance with these sections to engage in asbestos abatement in a public building.

(b) Licensee authorization. Asbestos abatement contractor licensees are spe-

cifically authorized to employ asbestos abatement supervisors and asbestos abatement workers who are currently licensed under these sections to carry out asbestos abatement procedures. They may employ licensed operations and maintenance (O&M) supervisors for building O&M activities, or as workers. Licensees are cautioned to observe the prohibited acts in §295.37 of this title (relating to Licensing and Registration: Conflict of Interests).

(c) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos abatement contractor shall be \$500.

(d) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualifications. Applicants for licensing as asbestos abatement contractors shall submit:

(1) a certificate of training from a training provider approved by or acceptable to the department, indicating successful completion of an approved 36-hour course for asbestos abatement contractors and project supervisors or the current annual refresher training course, as described in §295.64 this title (relating to Training: Required Asbestos Training Courses). An applicant organization shall designate a corporate officer, general partner, or proprietor, according to the kind of organization, for the purpose of complying with this training requirement;

(2) a certificate of good standing, issued by the State Comptroller's Office, stating that all franchise taxes due from the applicant have been paid;

(3) a State of Texas sales tax account number for the applicant organization;

(4) evidence of insurance as required in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), in the amount of \$1,000,000, when doing work for hire;

(5) a written respiratory protection plan to be maintained and adhered to during periods of abatement activity;

(6) a description of the protective clothing and respirators which will be used;

(7) a description of the site decontamination procedures;

(8) a description of the procedures for handling waste containing asbestos;

(9) a description of the removal and encapsulation methods;

(10) a description of the air-monitoring procedures;

(11) a description of final cleanup procedures;

(12) a description of the provisions for record-keeping;

(13) a list of abatement projects completed in the past year;

(14) a copy of all disposal manifests for projects completed in the past year;

(15) a list of inspections performed by other agencies; and

(16) copies of all citations issued.

(f) Responsibilities. The asbestos abatement contractor shall be responsible for:

(1) standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations, referenced in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) recordkeeping requirements, at both central office and work site locations, as found in §295.62 of this title (relating to Operations: Recordkeeping);

(4) required notification to the department about impending abatement projects, changes requiring re-notification, and emergency notifications, as described in §295.61 of this title (relating to Operations: Notifications);

(5) the requirement to supply and train employees who perform asbestos-related activities in the use of personal protection equipment, and to supervise their compliance;

(6) maintenance of the current training status of each employee, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses), and the annual physical examinations;

(7) standards and practices for O&M activities, as conducted for hire by a contractor, as described in §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities);

(8) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations);

(9) maintenance of liability insurance, as described in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements); and

(10) maintenance of workers' compensation insurance issued by a company licensed to do business in this state, and written in this state on a form prepared by the Texas Department of Insurance, or evidence of self insurance, if required by contract specifications or a building owner.

§295.46. *Licensure: Asbestos Abatement Supervisor.*

(a) Licensing requirement. An individual must be licensed as an asbestos abatement supervisor in compliance with these sections to engage in the supervision of an asbestos abatement project conducted in a public building. Such licenses are valid for a period of one year from the effective date and shall be renewable.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos abatement supervisor shall be \$300.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. Applicants for licensing as asbestos abatement supervisors are required to submit:

(1) work experience - to qualify for an asbestos abatement supervisor license, verifiable written documentation must be provided of at least 90 days of legally qualifiable work experience as a trained worker performed over a period of not less than 12 months and within the past 24 months. Qualifiable experience includes:

(A) project site preparation and establishing the abatement enclosure for friable asbestos containing material (ACM);

(B) use of respirators and protective equipment, personal hygiene, decontamination procedures, interpretation of air sampling results, and methods to reduce airborne fiber levels;

(C) use of engineering controls, abatement work methods and practices, and final cleanup procedures;

(D) handling of waste asbestos as part of an abatement project;

(E) removal, enclosure, or encapsulation of asbestos;

(F) work performed in an administrative capacity relating to asbestos abatement projects such as project manager or advisor, or consultant, may be accepted as qualifying experience. No more than 30 days may be counted as qualifiable work experience under this category;

(G) experience as an asbestos air monitoring technician, which includes personal air sampling, regulated-area airborne asbestos sampling, aggressive sampling for final cleanup, plus on-site project recordkeeping documenting daily operations, controlling entry and exit from this enclosure, etc., may be accepted as qualifying experience, subject to time-period limitations, minimum number of abatement projects (5), or work experience. No more than 30 days may be counted as qualifiable experience under this category;

(H) work performed as an asbestos project supervisor or worker licensed in another state can qualify as experience; and

(I) the burden of proof for all points of the qualifying experience is on the individual applicant. Applicants for abatement supervisor licenses must furnish contacts or sources that can fully verify the documented experience. Descriptions of abatement projects are not acceptable if the personal involvement of the applicant cannot be determined by the reviewer. If, in the opinion of the reviewing staff members, applicant experience cannot be properly and sufficiently verified, such experience must be rejected;

(2) a certificate of training indicating successful completion of an approved 36-hour course for abatement contractors and supervisors, or the current annual refresher training course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Course);

(3) an acceptable written opinion of a physical examination as described in §295.42(d)(3) of this title (relating to Registration: Asbestos Abatement Workers);

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-

identification card from Texas Law Course in accordance with §295.64(g) of this title (relating to Required Asbestos Training Courses) is required; and

(5) a 1" x 1" photograph of the face.

(e) Responsibilities. The asbestos abatement project supervisor shall:

(1) comply with standards of operation, including Environmental Protection Agency (EPA) and Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations, which have been adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(2) comply with additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(3) maintain records at both the central office and the work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(4) supply personal protection equipment and train employees who perform asbestos-related activities in the use of equipment, and to supervise their compliance;

(5) comply with standards and practices for O&M activities, as conducted for hire, according to §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities); and

(6) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspection and Investigations).

(f) Other duties. Abatement supervisors may also assume the duties of asbestos abatement workers or perform O&M activities affecting asbestos materials.

§295.47. Licensure: Individual Asbestos Consultant.

(a) Licensing requirements. An individual must be licensed as a consultant to design asbestos abatement projects. (Texas Civil Statutes, Article 4477-3a, §4B(g), as amended, 1991.)

(1) Asbestos abatement project design includes the inspection of public buildings for asbestos containing material (ACM), the evaluation and selection of appropriate asbestos abatement methods, project layout, the preparation of plans, specifications and contract documents, and the review of environmental controls, abatement procedures and personal protection equipment employed during the project.

(2) If an asbestos abatement project includes alterations to a building's structure, its electrical, mechanical, safety systems, or their components, a registered architect or engineer must prepare the appropriate plans and specifications as required by other state laws in addition to the requirement of subsection (a)(1) of this section.

(b) Scope: Individual licenses. In addition to the design of asbestos abatement projects, individual asbestos consultants are licensed to provide:

(1) asbestos surveys and assessment of the condition of ACM;

(2) response actions, instruction, and periodic surveillance recommendations for the control of asbestos and the conduct of operations and maintenance (O&M) programs;

(3) the collection of bulk material samples, airborne substance samples, and the planning of sampling strategies;

(4) owner-representative services for asbestos abatement projects or O&M programs;

(5) consultation regarding compliance with various regulations and standards, recommending abatement options, and preparations for asbestos abatement projects, specifically including technical specifications and contract documents; and

(6) the selection, fit testing, and appropriate use of personal protection equipment and engineering controls for asbestos-related activities;

(c) Fees. The fee for initial application or for annual renewal of license for asbestos consultant individuals shall be \$300.

(d) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Eligibility for licensing. Verifiable evidence of current eligibility must be submitted with all applications for licensing as an individual asbestos consultant, which includes any one of the following:

(1) current registration as an architect or professional engineer;

(2) current highest full-qualification memberships in a national professional organization devoted to technical proficiency in environmental or occupational health protection, which includes:

(A) a published code of ethics;

(B) administration by an active board of directors; and

(C) admission requirements that specify college courses and other training, a bachelor's or higher degree, at least three years' experience in specified fields, and a qualification examination;

(3) possession of a bachelor's degree in architecture, engineering, physical or natural science from an accredited four-year college or university, and including four years' experience in areas affecting environmental or occupational health matters; or

(4) for individuals making application before January 1, 1993, only: possession of a high school diploma (or GED) together with a qualifying minimum of four years' abatement experience, including at least two years of full-time practice as an asbestos consultant.

(f) Qualification for licensing. To qualify as an individual asbestos consultant, individuals must:

(1) submit verifiable documentation of their asbestos-related activity in conjunction with at least six asbestos abatement projects covering a period of at least a year within the past three years. (Applicants made eligible under subsection (e)(4) of this section must comply with those experience qualifications);

(2) furnish a physician's statement of the required physical examination done within the past year;

(3) have successfully completed the following training courses or the necessary annual refresher courses at an approved training facility within the past year:

(A) the initial training for asbestos abatement contractors and supervisors, consisting of at least 36 hours of required instruction, or an approved training course specifically for abatement project designers, consisting of at least three and one half days of required instruction;

(B) training in sampling techniques and use of monitoring equipment, consisting of three days required instruction, as required for air monitor technician (this course is not required of certified industrial hygienists);

(C) training in asbestos building surveys, as required for licensed asbestos building inspectors and management planners, consisting of five days of instruction;

(D) as soon as available from training providers licensed under these sections, a training course for asbestos consultants, as specified in §295.64 (relating to Training: Required Asbestos Training Courses) may replace the training listed in subparagraphs (A) and (B) of this paragraph;

(E) a single refresher training course, consisting of eight hours of instruction and designed specifically for asbestos consultants, shall be the sole annual refresher requirement;

(F) in addition to all requirements of subparagraphs (A) thru (D) of this paragraph, by July 1, 1993, an individual applying for licensure or renewal must take and pass a test provided by the department, with a score of at least 70%;

(4) submit a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(h) of this title (relating to Required Asbestos Training Courses) is required; and

(5) submit a 1" X 1" photograph of the face.

(g) Responsibilities. The individual asbestos consultant shall:

(1) preserve public health and diminish or eliminate hazards or potential hazards caused by the presence of ACM in public buildings;

(2) provide professional services to the building owner or management concerning asbestos building surveys, assessment of conditions of materials, planned operations and maintenance, compliance with work practices and standards;

(3) evaluate possible asbestos abatement projects and prepare plans, specifications, schedules, and contract options for abatement projects;

(4) represent the interests of the building owner during the conduct of an asbestos abatement project, including consultation with the abatement contractor personnel, requiring compliance with regulations and specifications, requiring remedy of minor infractions, providing monitoring services, maintaining progress records and photographs as necessary, waste disposal, and providing the opinion or

assurance of the final clearance of the project; and

(5) advise on the selection and use of appropriate personal protective equipment for all asbestos-related activities.

(h) Insurance. A licensed individual asbestos abatement consultant must obtain professional liability coverage in the amount of \$1,000,000 for errors and omissions, or be covered under the consultant's employer's policy, as specified in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), when doing work for hire.

(i) Signature authority. All asbestos abatement plans and specifications must be signed by a licensed asbestos consultant.

§295.48. Licensure: Asbestos Consultant Agency.

(a) Scope: Asbestos consultant agency licenses. Consultant organizations desiring to be licensed as asbestos consultant agencies shall designate one or more individuals licensed as asbestos consultants, who shall be either principals or employees, and who shall have responsibility for the organization's asbestos activity.

(b) Authorization and conditions. A licensed asbestos consultant agency is specifically authorized to employ asbestos consultants, asbestos project managers, asbestos inspectors and management planners, and air monitoring technicians who are currently licensed under these sections to assist in the conduct and fulfillment of the agency's asbestos consultation activity, as necessary. As a condition of licensure, an asbestos consultant agency must comply with the following:

(1) designate at least one licensed individual asbestos consultant in residence at each headquarters or permanent office established within the state which conducts asbestos consulting activity;

(2) notify the Texas Department of Health (department) in writing of any additions or deletions of designated individual asbestos consultants within 10 days of such occurrences;

(3) refrain entirely from asbestos consulting activity at any office during any period without the active employment of at least one responsible individual licensed asbestos consultant at that location; and

(4) refrain entirely from engaging as an asbestos abatement contractor in abatement or operations and maintenance activities. (Texas Civil Statutes, Article 4477-3a, §4C, amended 1991).

(c) Fee. The fee for an initial application or for an annual renewal of license for an asbestos consultant agency is \$200.

(d) Applications and renewals. Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Professional liability insurance coverage for errors and omissions. A licensed asbestos consultant agency shall provide for liability insurance in the amount of \$1,000,000 for all of the consultants and inspectors in its employ. (Texas Civil Statutes, Article 4477-3a., §4A(4), amended 1991).

(f) Qualification for licensing. Applicants for licensing as an asbestos consultant agency must provide a certificate of good standing issued by the secretary of state for Texas for a corporation or other business entity. (Texas Civil Statutes, Article 4477-3a., §4A(1), amended 1991.)

(g) Responsibilities. The asbestos consultant agency shall:

(1) ensure that asbestos abatement projects are designed to minimize risks of asbestos exposure to workers, building occupants, and the public;

(2) ensure compliance with these sections and all relevant regulations;

(3) ensure that projects are properly conducted, and that asbestos is adequately removed, enclosed, or encapsulated; and

(4) ensure that asbestos waste is properly disposed of.

§295.49. Licensure: Asbestos Project Manager.

(a) Licensing. An individual must be licensed as an asbestos project manager and must be employed by a licensed asbestos consultant agency to perform in the capacity of owner's representative to evaluate the quality of the work being performed during an asbestos abatement project. The asbestos project manager may:

(1) monitor the project to insure the safety of both project personnel and building occupants, and the adequacy of controls;

(2) insure that all licensing requirements are being met by the abatement contractor; and

(3) advise contractors on behalf of their clients on the selection and use of appropriate personal protective equipment related to the asbestos abatement activities.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos project manager shall be \$150.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. To qualify for a license, an applicant must demonstrate, in a manner acceptable to the department, that they have:

(1) a high school diploma or a GED certificate;

(2) a certificate of training indicating successful completion of an approved 36-hour course for abatement contractors and project supervisors or the current annual refresher training courses as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) an acceptable written opinion of a physical examination as described in §295.42(d)(3) of this title (relating to Registration: Asbestos Abatement Workers);

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(g) of this title (relating to Required Asbestos Training Courses) is required; and

(5) a 1" x 1" photograph of the face.

(e) Responsibilities. Those responsibilities and duties that shall be assumed by the asbestos project manager include ensuring compliance with:

(1) licensing standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) standards of operation including EPA and OSHA regulations adopted by reference in §295.33 of this title (relating to Adoption by Reference of Federal Standards);

(3) additional work practices, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures);

(4) standards covering maintenance of records at both the department central office and work site locations, as described in §295.62 of this title (relating to Operations: Recordkeeping);

(5) standards and practices for operations and maintenance activities, according to §295.59 of this title (relating to Operations: Operations and Maintenance (O&M) Activities); and

(6) assisting department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

§295.50. Licensure: Asbestos Inspector.

(a) Licensing. An individual must be licensed as an asbestos inspector/surveyor and employed by a licensed asbestos consultant agency or licensed asbestos management planner to perform building surveys, including the collection of bulk samples of suspected asbestos containing material (ACM); to determine the location and condition of asbestos in a public building; and to document survey results. A licensed supervisor or restricted supervisor may take a bulk sample on a one-time basis to determine the existence of asbestos in material that had not been tested prior to the beginning of an asbestos-related activity or before performing operations and maintenance (O&M) work where suspect material is encountered.

(b) Fee. The initial licensing fee or the annual license renewal fee for an asbestos inspector is \$60.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualification. To qualify for a license, an applicant must demonstrate, in a manner acceptable to the department, that they have:

(1) a high school diploma or GED certificate;

(2) a certificate of training indicating successful completion of approved three day training course for asbestos inspectors, or the current annual refresher training course as described in §295.64 of the title (relating to Training : Required Asbestos Training Courses);

(3) an acceptable written opinion of a physical examination as described in §295.42(d)(3) of this title (relating to Registration: Asbestos Abatement Workers);

(4) professional liability insurance for errors and omissions in the amount of at least \$100,000 when doing work for

hire, as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements);

(5) work experience-applicants for licensing as asbestos inspectors are required to submit documentation of prior work experience with their application forms, as follows.

(A) Verifiable written documentation must be submitted as follows:

(i) completion of at least five asbestos surveys; or

(ii) current employment with and doing work under the supervision of a licensed management planner or consultant.

(B) The burden of proof for all points of the qualifying experience is on the individual applicant. Applicants for asbestos inspector licenses must furnish contacts or sources that can fully verify the documented experience. Descriptions of surveys are not acceptable if the personal involvement of the applicant cannot be determined by the reviewer. If, in the opinion of the reviewing staff members, applicant experience cannot be properly and sufficiently verified, such experience must be rejected;

(6) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(g) of this title (relating to Required Asbestos Training Courses) is required; and

(7) a 1" x 1" photograph of the face.

(e) Responsibilities. The asbestos inspector shall:

(1) comply with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) comply with guidelines for sampling schemes as presented in training course materials, or as required by consultant or management planner; and

(3) cooperate with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

(f) Signature authority. All asbestos abatement plans and specifications must be signed by a licensed asbestos consultant.

§295.51. *Licensure: Asbestos Management Planner.*

(a) Licensing. A person must be licensed under these sections develop a management plan, related to determining a written schedule and procedures to protect occupants from asbestos health hazards in a public building.

(b) Scope. In addition to the development of management plans, a licensed management planner is licensed to provide surveys and assess the condition of asbestos containing material (ACM).

(c) Fee. The initial licensing fee and the annual license renewal fee for an asbestos management planner is \$120.

(d) Applications and renewals. Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualification. To qualify for a license as an asbestos management planner, an applicant must demonstrate in a manner acceptable to the Texas Department of Health (department) that they meet the following applicable qualifications.

(1) The applicant must:

(A) have completed an Environmental Protection Agency (EPA) or State approved three-day inspector training courses together with an additional two-day management planner course of instruction within the past 12 months, or has remained certified by completing annual refresher training for management planners and inspectors, as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(B) have an associates degree or 60 credit hours from a college or university; or

(C) currently be performing management plans and pass a competency test to be administered by the department;

(D) provide a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before

January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(g) of this title (relating to Required Asbestos Training Courses) is required; and

(E) provide a 1" x 1" photograph of the face.

(2) An applicant organization shall designate a corporate officer, general partner, or proprietor, according on the kind of organization, for the purpose of complying with the training and education requirements in subsection (d) of this section.

(f) Responsibilities. The asbestos management planner shall be responsible for:

(1) the interpretation of the field notes and report of an asbestos building survey;

(2) the production of drawings which show the locations of asbestos materials, together with notes as to the extent and the condition of this ACM;

(3) writing an asbestos report which includes information from paragraph (2) of this subsection together with a proposed schedule of actions to be taken from the control of asbestos in the subject building; and

(4) advising clients about options for operations and maintenance or asbestos abatement;

(g) Signature authority. All asbestos abatement plans and specifications must be signed by a licensed asbestos consultant.

§295.52. *Licensure: Air Monitoring Technician.*

(a) Licensing. An air monitoring technician must be licensed to perform air monitoring for an asbestos abatement project or related activity and must be employed by a licensed asbestos consultant agency, licensed asbestos laboratory, licensed asbestos contractor, or building management (restricted) to obtain air samples in a public building. An air monitoring technician may obtain baseline, area, personal, and clearance samples; and may advise clients on air sampling and planning sampling strategy.

(b) Authority of air monitoring technicians. Air monitoring technicians may obtain baseline, area, personal and clearance samples, and they may advise clients on air sampling and planning sampling strategy.

(c) Fee. The fee for an initial application or for an annual renewal of the license for an air monitoring technician shall be \$50.

(d) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registration: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(e) Qualifications. To qualify for an air monitoring technician license, an applicant shall submit the following:

(1) a high school diploma or GED certificate;

(2) certificate of training indicating successful completion of an approved three-day training course for air monitoring technicians, or the current annual refresher training courses as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) an acceptable written opinion of a physical examination as described in §295.42(d)(3) of this title (relating to Registration: Asbestos Abatement Workers);

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(g) of this title (relating to Required Asbestos Training Courses) is required; and

(5) a 1" x 1" photograph of the face.

(f) Responsibilities. The air monitoring technician shall:

(1) collect air samples as specified by appropriate sampling procedures;

(2) collect air samples in the number, location, and frequency necessary to adequately reflect airborne levels of fibers in compliance with these regulations;

(3) use appropriate sampling techniques during area clearance sampling; and

(4) conduct air monitoring duties in an impartial, unbiased manner, and report monitoring results accurately.

§295.54. Licensure: Asbestos Laboratory.

(a) Licensing requirement. A person must be licensed in compliance with the provisions of this section to provide analysis of samples collected in public buildings for asbestos or fiber content.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos laboratory shall be \$200.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. To qualify for a license, an applicant must demonstrate, in a manner acceptable to the Texas Department of Health (department), that he or she meets the applicable following qualifications. The applicant must have:

(1) at least one individual, in responsible charge, who has completed the National Institute of Occupational Safety and Health (NIOSH) 582 course or equivalent;

(2) National Voluntary Laboratory and Analytical Program (NVLAP) accreditation, and/or be enrolled in the National Institute of Occupational Safety and Health (NIOSH) Proficiency Analytical Testing (PAT) program, or be on the Asbestos Analyst Registry;

(3) if the applicant is a Texas corporation, a certificate of good standing, issued by the State Comptroller's Office;

(4) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State, authorizing the corporation to do business in the state; and

(5) professional liability insurance for errors and omissions in the amount of at least \$1 million when doing work for hire as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements).

(e) Limitations. Limits which are placed on the type of services that a laboratory can perform are as follows.

(1) A laboratory may analyze bulk samples only if so accredited by NVLAP.

(2) A laboratory may analyze clearance samples by transmission electron microscopy (TEM) only if accredited by NVLAP.

(3) A laboratory enrolled in the NIOSH PAT program may perform phase-contrast microscopy analysis under controlled laboratory conditions or under field conditions, if quality-control analysis is performed on at least 10% of the samples analyzed in the field. All phased contrast analysis shall be performed by an analyst who has received NIOSH 582 training. The

laboratory must maintain individual records for each analyst to document the individual analyst's coefficient of variation.

§295.55. Licensure: Asbestos Training Provider.

(a) Licensing requirement. A person must be licensed as an asbestos training provider in accordance with these sections to offer and to conduct asbestos training for fulfillment of specific training requirements acceptable to the Texas Department of Health (department).

(b) Fee. The fee for an initial application or for annual renewal of the asbestos training provider license shall be \$500.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualification. Documentation required of applicants for licensing as asbestos training providers is as follows.

(1) Organization. There shall be a clear written description of the organization, including the address of its central office and the names and addresses of its principals, and a statement of intent concerning the courses and services to be offered and the planned locations for conducting them. If the organization is affiliated with or the subsidiary of another, a complete description of this arrangement is also required. The organization shall designate a staff member as director in charge of asbestos training.

(2) Classroom space. There shall be a description, including plan drawings and photographs, of the principal space or spaces available for the conduct of courses.

(3) Equipment. There shall be a description of the items of instructional equipment and accessories available for the conduct of courses. The provider shall furnish adequate equipment in good working order for each training session.

(4) Records. Records shall be maintained, including:

(A) a record of each asbestos course that is conducted, which shall include dates, location, instructors, trainees, etc., for a period of five years; and

(B) a file for each trainee, including applications and eligibility documentation, exam scores, etc., for a period of five years.

(5) Advertising. The following shall apply to any advertising to be done by the applicant. The applicant shall furnish examples of advertising to the department as issued.

(A) Printed bulletins, brochures, or other promotional literature must specify course prerequisites for admission, the content of the course, and requirements for successful completion.

(B) Training provider advertising shall not contain any illustration that conveys a false impression as to the size, importance, or location of their facility or their equipment.

(C) Training providers shall not use endorsements or commendations concerning asbestos training except with written consent of the writer and without offer of financial compensation.

(D) The advertising of training providers shall not state or intimate that prospective employees are being sought, that employment upon completion can be guaranteed, and no quotations of dollar amounts indicative of earnings potential shall be made.

(6) Fees and other charges. A schedule of proposed fees and other charges shall be submitted with the application. If the provider will offer financing of these fees, the details of such plan must be included. Trainees shall not be held liable for any fees or charges not disclosed prior to enrollment.

(7) Refund and cancellation policy. Each training provider must have a written policy concerning refunds and cancellations in both Spanish and English that is made available to applicants prior to acceptance of fees for enrollment, and shall include the procedure for notification by the trainee desiring to cancel.

(8) Admission requirements. The training provider shall discuss and inform each prospective trainee of the requirements for the type of license being sought, and of necessary qualifications they must have, as follows.

(A) Individuals not eligible for employment in the United States will not be licensed.

(B) Eligibility for refresher training courses is dependent on the effective date of the initial training.

(C) Certain asbestos training courses require the successful completion of

other training courses as a condition for admission.

(D) The trainee shall be furnished with a manual containing an outline of the course and the texts of applicable guidelines and recommendations.

(9) Maximum trainee-instructor ratio. The maximum number of trainees in a lecture session shall be 40. Hands-on training groups shall have no more than 12 trainees and must be so arranged that each trainee is given individual attention.

(10) Attendance and course completion standards. Attendance and course completion standards are as follows.

(A) Roll call in asbestos training courses shall be taken at the beginning of each four-hour segment of course instruction. Control of exits and entrances shall be maintained. A master attendance record shall be maintained for each session.

(B) A trainee is not eligible to complete a given course if more than 20% of the session has been missed, and the qualifying exam shall not be offered in such instances. The records of that session shall be marked to this effect.

(C) Training providers shall develop a written policy for handling no-shows and absentees.

(D) A training provider must certify each examination taken by a trainee as to whether a minimum score of 70% correctly answered questions was achieved. The training provider shall have a written policy concerning re-examinations which shall apply to all such cases of failure of the initial examination. Failure of the re-examination means that the course will have to be repeated.

(e) Conditions of issuance. The following conditions and agreements shall apply to issuance of licenses under this section.

(1) There shall be an agreement to send at least one course instructor to any meeting sponsored by the department for the purpose of ensuring quality training courses in asbestos abatement and related topics. There will be no more than two such meetings per year.

(2) The department shall be furnished a copy of all scheduled courses and shall be advised at least 24 hours in advance of any course cancellations or any non-scheduled courses to be presented.

(3) There shall be a description and an example of numbered certificates

issued to students who attend the course and pass the examination. The certificate must be in conformance with 40 CFR, Part 763, Subpart E, Appendix C, and must show the social security number of the individual certified. A uniquely numbered certificate may also be used, providing the social security number is shown.

(4) Trainers may present other courses or seminars relevant to asbestos activities including but not limited to, courses on respirator training and compliance, airborne sample analysis (NIOSH 582 or equivalent), sample analysis by polarized light microscopy, construction safety (29 CFR, Part 1926), hazard communications (Texas or OSHA), hazardous worker (29 CFR, §1910.120), local education agency-asbestos coordinator, or advanced hands-on for worker and supervisor, or floor tile removal. Such courses will not be accredited by the department. Any federal accreditation requirements will be complied with by the provider. Such courses and seminars may not be used for refresher training credit.

(f) Course instructors. The training provider shall submit a resume of each instructor that will participate in the conduct of any asbestos training course to be approved by the department. The training provider will notify the department of additions and deletions to their instructor roster within 15 days of actual occurrence, and shall notify the department by FAX or express mail of any last-minute instructor substitutions for scheduled courses.

(g) Instructor qualifications. Training instructors shall be qualified in any one of the categories in paragraphs (1) through (5) of this subsection. Training qualifications must be fully documented, and verifiable by the department. The categories include:

(1) at least two years of actual hands-on experience in asbestos-related activities (abatement or consulting) with continuous training accreditation from Environmental Protection Agency (EPA) asbestos courses, and a high school diploma and completion of one or more teacher education courses in vocational or industrial teaching;

(2) a college degree in natural sciences or a related field, with one year's hands-on experience in asbestos related activities (abatement or consulting), and current accreditation in at least one EPA asbestos course;

(3) at least three years teaching experience in Hazmat or HazWoper or EPA approved asbestos courses, and completion of one or more teacher education courses in vocational or industrial teaching from an accredited junior college or university;

(4) qualification on an individual basis of professional persons for the purpose of teaching their specialty, such as law, medicine, insurance, etc.; or

(5) a vocational teacher with certification from the Texas Education Agency with one year's hands-on experience in asbestos related activities (abatement or consulting) and current accreditation in at least one EPA asbestos course.

(h) Professional references. Each instructor application submitted shall be accompanied by professional references attesting to teaching experience and qualification.

(i) Complete applications. The department shall not accept any instructor application until it is complete. The department shall reject any such application that does not contain sufficient references to be fully verifiable.

(j) Responsibilities. The asbestos training provider shall be responsible for:

(1) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements);

(2) presenting to students all course material as outlined in syllabus and as represented to the department for approval;

(3) providing environment, training, and testing of sufficient quality that student retains required elements of course; and

(4) cooperating with department personnel in the discharge of their official duties to conduct inspections and investigations, as described in §295.68 of this title (relating to Compliance: Inspections and Investigations).

§295.56. Licensure: Asbestos Transporters.

(a) Licensing. A person must be licensed as an asbestos transporter in compliance with these sections to engage in the transport of asbestos in the State of Texas for the purpose of disposal.

(b) Fee. The fee for an initial application or for an annual renewal of the license for an asbestos transporter shall be \$200.

(c) Applications and renewals. Applications shall be submitted as required by §295.38 of this title (relating to Licensing and Registrations: Applications and Renewals). Out-of-State applicants must comply with §295.39 of this title (relating to Licensing and Registration: Out-of-State Applicants).

(d) Qualifications. To qualify for a license, an applicant must demonstrate, in a

manner acceptable to the department, that they meet the applicable qualifications. The applicant must submit with the application:

(1) if the applicant is a Texas corporation, a certificate of good standing, issued by the State Comptroller's Office must be submitted with the application for licensure;

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Secretary of State authorizing the corporation to do business in the state, must be submitted with the application for licensure;

(3) liability and auto liability insurance in the amount of \$1,000,000 as required by §295.40 of this title (relating to Licensing and Registration: Insurance Requirements), when doing work for hire;

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable. If course was taken out-of-state, a copy of wallet-size photo-identification card from Texas Law Course in accordance with §295.64(g) of this title (relating to Required Asbestos Training Courses) is required; and

(5) a 1" x 1" photograph of the face.

(e) Responsibilities. An asbestos transporter shall:

(1) comply with federal regulations in 40 CFR, Part 61 titled "National Emissions Standards for Hazardous Air Pollutants (NESHAP)", specifically the provisions concerning asbestos transport, and 40 CFR, Part 763, Subpart E, Appendix D, titled "Transport and Disposal of Asbestos Waste";

(2) train and supply employees who will handle asbestos with personal protective equipment and training for its use, and supervise their compliance;

(3) establish and maintain records of transporting asbestos to disposal sites, and report annually to the department on the quantity transported to each disposal site destination;

(4) comply with department personnel in the discharge of their official duties to conduct inspections and investigations, as set forth in §295.68 of this title (relating to Compliance: Inspections and Investigations); and

(5) train employees in compliance with OSHA regulations in 29 CFR, §1910.120, in anticipation of possible spills of asbestos.

§295.58. Operations: General Requirements.

(a) Responsibility. It is the responsibility of owners of public buildings or their designated agents to engage persons licensed under the provisions of these sections to perform any asbestos-related activity.

(b) Supervision.

(1) Every asbestos abatement project undertaken by a licensed contractor in a public building shall be supervised by at least one licensed asbestos abatement supervisor.

(2) Abatement supervisors shall remain on the job site and in immediate contact with those under their supervision during all periods of actual abatement activity.

(3) During any period of actual abatement activity, an abatement supervisor shall be stationed within the containment area at least 25% of the time for the purpose of supervising the progress of the abatement work.

(4) Every small-scale, short-duration maintenance or repair activity that involves asbestos containing material (ACM) in a public building, shall be supervised by at least one restricted-license operations and maintenance (O&M) supervisor. Restricted activity supervisors shall be at the job site during all periods of asbestos disturbance activity.

(5) Abatement contractors or building management licensees may also employ licensed abatement supervisors to supervise small-scale, short-duration operations and maintenance activities.

(6) Supervisors with either restricted or unrestricted licenses may be employed as asbestos abatement workers.

(7) All licensed supervisors are responsible for respirator fit testing, personal protection, security, and control of access at the job site.

(8) Supervisors licensed under these sections shall require that operations at the asbestos job site cease whenever hazardous or unlawful situations are detected, so as to effect a remedy.

(c) Employees. Each employee or agent of any licensee who must intentionally disturb, handle, or otherwise work with ACM, or who shall engage in an asbestos abatement project, asbestos O&M activities or other asbestos-related activity shall have an annual physical examination, respirator fit-test, be properly equipped and trained, and be licensed or registered in accordance with these sections.

(d) Records. Each licensee shall keep a complete record of each asbestos related activity or operation in public buildings to the extent of his or her participation. Such records shall be kept for 30 years. Each licensee shall also keep a copy of all violations issued against him by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration of the United States Department of Labor (OSHA), or a state agency. All required records shall be made available, upon request, for inspection and review by the department. See §295.62 of this title (relating to Operations: Recordkeeping) for specific requirements.

(e) Inspections. Each licensee shall assist and cooperate with all properly-identified representatives of the department in the conduct of asbestos inspections, surveys, or monitoring procedures at all reasonable or necessary times, with or without prior notice. Such inspections may be made at proposed, actual, or former sites of asbestos-related activities, or of the premises, records, equipment and personnel of licensees or applicants, or of those who have held active licenses previously.

(f) Respirator program. Each employer licensee shall be responsible for establishing and maintaining a written respiratory protection program, as required by OSHA regulations in 29 CFR, §1910.134.

(g) Individual respirator fit. The licensee must maintain in safe working condition a sufficient number of respirators of the types and styles approved by NIOSH to meet all anticipated requirements of his employees; and any employee whose facial characteristics, hair, mustache, or beard preclude a tight fit of a negative-pressure respirator shall not be allowed to enter the containment area of an asbestos operation using this type of respirator.

§295.59. Operations: Operations and Maintenance (O&M) Requirements.

(a) Restrictions. O&M activities are restricted to small-scale, short-duration projects.

(b) Work practices. Work practices shall include the following requirements.

(1) Employers shall be responsible for furnishing and requiring the use of respirators, protective clothing, high-efficiency particulate air filter (HEPA) vacuum machines, glove bags, and other necessary equipment for all who perform O&M activities.

(2) All persons not performing work shall be excluded from the work areas.

(3) Physical barriers shall be used where necessary to limit access to the work area.

(4) Airtight barriers, as described in §295.60 of this title (relating to Operations: Abatement Practices and Procedures), shall be constructed for containment of asbestos fibers, or a glovebag technique may be used for removal or repair of ACM on pipes or ducts.

(5) Asbestos material must be wetted with amended water and remain wet throughout the work operation.

(6) Asbestos exposed as a result of spot repairs shall be suitably enclosed or encapsulated.

(7) HEPA vacuuming or wet cleaning shall be used to decontaminate work areas and equipment until there is no visible debris.

(8) Asbestos shall be bagged and placed in containers, and disposed of in accordance with requirements to be found in §295.60 of this title (relating to Operations: Abatement Practices and Procedures).

§295.60. Operations: Abatement Practices and Procedures.

(a) General provisions. The following general work practices are minimum requirements for protection of public health, and do not constitute complete or sufficient specifications for an asbestos abatement project. More detailed requirements in plans and specifications for a particular abatement project, or requirements that address the unusual or unique circumstances of a project may take precedence over the provisions of this section.

(1) Federal work practices for asbestos abatement are referenced in 40 CFR 61.145 Environmental Protection Agency (EPA) titled "Standard for Demolition and Renovation", as amended.

(2) An asbestos abatement project designer who is licensed under §295.47 of this title (relating to Licensure: Individual Asbestos Consultant) may specify work practices that vary from the provisions of this section as long as the work practices specified are at least as protective of public health, and are described in the project notification submitted to the Texas Department of Health (department).

(3) If asbestos containing material (ACM) is to be removed or encapsulated, it must be within a regulated area.

(b) Critical barriers. Regulated areas within which asbestos abatement is to be conducted shall be separated from adjacent areas by barriers attached securely in place. All openings between isolated containment areas and adjacent areas, including but not limited to windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates,

diffusers and skylights, shall be sealed. All penetrations that could permit air infiltration or air leaks through the plastic sheeting shall be sealed, with exceptions of the make-up air provisions and the means of entry and exit.

(c) Movable objects. All movable objects shall be removed from the work area. Cleaning of contaminated items shall be performed if the items are to be salvaged or reused. Otherwise, they shall be properly disposed of as asbestos waste. All non-movable objects that remain in the work area shall be covered with a minimum of four-mil sheeting, secured in place.

(d) Floor and wall preparation. Floor sheeting shall completely cover all floor surfaces and consist of a minimum of two layers of sheeting of at least six-mil. thickness. Floor sheetings shall extend up sidewalls at least 12 inches and be sized to minimize seams. No seams shall be located at wall-to-floor joints. Sealing of all floor penetrations against water leakage is mandatory. Wall sheeting shall completely cover all wall surfaces and consist of a minimum of one layer of four-mil sheeting. It shall be installed so as to minimize joints and shall extend beyond wall/floor joints at least 12 inches. No seams shall be located at wall-to-wall joints.

(e) Decontamination system. A worker decontamination enclosure system consisting of a clean room, shower room, and equipment room, each separated from the other and from the work area by airlocks accessible through doorways. Except for the doorways and the make-up air provisions for the enclosure, the worker decontamination system shall be sealed against leakage of air. All personnel must exit the containment area through the shower before entering the clean room. No asbestos-contaminated individuals or items shall enter the clean room.

(f) Heating, ventilation, and air conditioning system equipment (HVAC). All HVAC equipment in or passing through the work area shall be shut down, and preventative measures taken to prevent accidental start-ups. All intake and exhaust openings and any seams in system components shall be sealed with at least six-mil sheeting and/or tape. All old filters shall be disposed of as asbestos waste.

(g) Warning signs. Danger signs in accordance with 29 CFR §1926.58, shall be displayed, in both the Spanish and English languages, at all entrances to regulated areas, and on the outside of critical barriers.

(h) High-efficiency particulate air (HEPA) cleaning. Except where not feasible, cleaning procedures using wet methods and HEPA vacuuming, and visual inspections shall be performed in accordance with American Society for Testing Materials

(ASTM) Standard E-1368, "Standard Practice for Visual Inspection of Asbestos Abatement Projects", available from the American Society for Testing Materials, 1916 Race Street Philadelphia, PA 19103.

(i) Containment-area ventilation. Units with HEPA filtration, and in sufficient number to provide a maximum of -0.02 inches of water negative pressure and a minimum of four containment air changes per hour, shall be operated continuously for the duration of the project. The duration of the asbestos abatement project for the purpose of this requirement shall be considered from the time a regulated area is established through the time acceptable final clean air-monitoring results are obtained. These units shall exhaust filtered air to the outside of the building wherever technically feasible.

(j) Requirements for removal of asbestos containing material (ACM). The requirements for removing ACM are that:

(1) all ACM shall be thoroughly wetted prior to removal or other handling;

(2) asbestos covered components that are going to be removed from the building may either be stripped in place and cleaned (and pass a visual inspection), or the ACM may be thoroughly wetted and the entire component wrapped in two layers of six-mil plastic, labeled and sealed, providing that:

(A) components such as sections of metal lath that cannot be safely lowered to the floor shall be stripped in place;

(B) any component that cannot be lowered or handled without presenting an excessive fiber release or safety hazard shall be stripped in place;

(C) sharp edges of components shall be protected to preclude tearing the plastic wrapping and causing injury; and

(3) ACM shall be removed in small sections and containerized while wet. At no time shall material be allowed to accumulate on the floor or become dry. Structural components and piping shall be thoroughly wetted prior to wrapping in plastic sheeting for disposal.

(k) Requirements for the encapsulation of ACM.

(1) Prior to encapsulation, loose and hanging ACM shall be removed.

(2) Filler material applied to gaps in existing material must contain no asbestos, shall adhere well to the substrate and shall provide an adequate base for the encapsulating agent.

(3) Encapsulant shall be applied using only airless spray equipment with the nozzle pressure and tip size set according to the manufacturer's recommendations.

(4) Encapsulated materials shall be specifically designated by signs, labels, color coding or some other mechanism to warn individuals who may in the future be required to disturb the material.

(l) Requirements for the enclosure of ACM.

(1) Acceptable enclosure shall be airtight and of permanent construction, so that the area behind them is inaccessible.

(2) All areas of ACM shall be wetted if they are to be disturbed during the installation of hangers, brackets, or other portions of the enclosure.

(3) Prior to enclosure, loose and hanging ACM shall be removed.

(4) Filler material applied to gaps in existing materials shall contain no asbestos, and shall adhere well to the substrate.

(5) Enclosures for ACM shall be specifically designated by signs, labels, color coding or some other mechanism to warn individuals who may in the future be required to disturb the material.

(m) Electrical safety. Ground-fault circuit interrupter (GFCI) units shall be installed on all electrical circuits used within the regulated and containment areas.

§295.61. Operations: Notifications.

(a) General provision. The Texas Department of Health (department) must be notified of the intent to perform any asbestos abatement or operations and maintenance (O&M) activity affecting ACM in public buildings. Notification shall be made prior to commencement of the activity and shall be submitted on the form specified by the department. This notification is in addition to any required by Environmental Protection Agency (EPA), (NESHAP), Occupational Safety and Health Administration of the United States Department of Labor (OSHA), or the Texas Air Control Board.

(b) Responsibility. It is the responsibility of the building owner to notify the department under this section. This responsibility may be delegated to a licensed asbestos consultant, consultant agency, or abatement contractor.

(c) Timeliness of notification. Notifications of asbestos abatement or O&M activity must be received or postmarked at least 10 working days before the start of such activity. Federal regulations require that original notifications are to be sent by mail. The start date is considered to be the

date when actual abatement or O&M begins.

(d) Start-date change to later date. When asbestos abatement or O&M will begin later than the date contained in the notice, the licensee shall:

(1) notify the department of the new start date by telephone as soon as possible but prior to the original start date; and

(2) provide the department with a written notice of the new start date as soon as possible before, but no later than the original start date. Delivery of the updated notice by the United States Postal Service, commercial delivery service, hand delivery, or telephone facsimile (FAX) is acceptable.

(e) Start-date change to earlier date. When asbestos abatement or O&M covered by these sections will begin on a date earlier than the date specified for the original start, the licensee shall provide the department with a written notice of the new start date at least 10 working days beforehand.

(f) State and federal start-date requirement. In no event shall actual abatement, as covered by this section, begin on a date other than the date contained in the written notice of start date.

(g) Consolidated notifications of small operations. Notifications involving a series of small, separate asbestos O&M or abatement operations (each less than 160 square feet or 260 linear feet in size) may be combined by listing and attaching the information to a single notification form, provided that any listing period does not exceed 31 days in length.

(h) Provision for emergency. In the event of emergency renovations made necessary by an unexpected or unplanned asbestos incident, notification will be made as soon as practicable, but in no event later than 24 hours after the occurrence of the incident. Initial notification can be made by telephone, followed by formal notification on the department's notification form.

§295.62. Operations: Recordkeeping.

(a) Record retention. Records and documents required by this section shall be retained for a period of 30 years from the date of project completion unless otherwise stated. Organizations or individuals ceasing to do business, shall notify the Texas Department of Health (department) in writing within 30 days of such event. The department, on receipt of such notification may instruct that the records be surrendered and may specify a repository for such records. The organizations or individuals shall comply with the department's instructions within 60 days.

(b) Training providers. Licensed training providers shall establish and maintain attendance records pursuant to the requirements of this section for a period of five years, and shall make such records and documents available to the department upon request.

(c) Asbestos contractors.

(1) Central location. The following records and documents shall be maintained by asbestos contractors at a central location at the principal place of business for a period of 30 years and shall be made available to the department upon request:

(A) records and documents required by 29 CFR 1910, and 29 CFR 1926.58, as amended;

(B) name, address, and asbestos certificate number of each employee, past and present, including dates of employment, and description of each employee's involvement in each asbestos project while employed by the contractor, including name, address, location, and duration of project;

(C) copies of all regulatory agency correspondence including letters, notices, citations received and notifications made by the contractor;

(D) records and documents required to be maintained under any other applicable federal, state, or local law, regulation or ordinance;

(E) receipts and documentation of disposal of asbestos waste showing dates, locations and amounts of asbestos waste disposed including the identification of the source of the asbestos waste and the transporter (company name or driver name, if an employee of the contractor);

(F) copies of laboratory reports and sample analysis documenting workplace and personal exposure levels, including copies of consultant's reports provided to the contractor regarding employee or clearance level monitoring; and

(G) copies of all contracts awarded for asbestos abatement projects.

(2) On-site. Records and documents shall be maintained on-site at the asbestos project location for the duration of the project. Records and documents with personal references shall be made available to all persons employed at the site upon request. All on-site records and documents shall be made available to the department

upon request. The records and documents covered by this paragraph include:

(A) a current copy of the work practice requirements;

(B) a copy of the contract or technical specifications governing the project or if no contract, location and description of operations and description of abatement procedures;

(C) a listing of all employees, by name, Social Security number, and Certificate Number working on the project;

(D) a listing of each of the contractors, sub-contractors, and consultants on the project;

(E) a daily sign-in/out log which identified persons by name and the length of time each spent at the site;

(F) records of all on-site air monitoring;

(G) a written respirator program which conforms to requirements of 29 CFR, §1910.134(b), as amended;

(H) name and address of the contractor or building owner-operator;

(I) name and address of project supervisor(s);

(J) description of personal safety practices;

(K) name and address of waste disposal site;

(L) dates of participation in the operation; and

(M) a roster of registered asbestos workers employed.

(d) Analytical services. Licensed providers of asbestos analytical services shall maintain copies of all records and documents required by these sections and copies of all analyses performed, including the sample identification number and analytical results, and make such documents available to the department upon request.

(e) Consultants. Licensed consultants shall maintain client files pertaining to inspection, sampling, assessment, clearance level monitoring and copies of daily construction logs pertaining to contractor work

practices and make such documents available to the department upon request. Logs for completed projects shall be maintained at the consultant's principal place of business. Logs for current projects shall be kept at the asbestos project work site until final cleanup has been certified.

(f) Asbestos building management (restricted). Building management licensed to perform small-scale, short-duration operations, and maintenance (O&M) activities affecting asbestos shall maintain, at the place of business, copies of all documents which constitute the application of each O&M restricted supervisor's license and the registration of each asbestos worker. All such restricted operations performed shall be recorded in chronological order and made available for inspection as requested by the department.

§295.64. Training: Required Asbestos Training Courses.

(a) General provisions. Applicants for licensing or renewal must submit evidence of fulfillment of specific training requirements acceptable to the department under these sections.

(1) Training courses shall be conducted by training providers licensed by the department. Training within the confines of this State by unlicensed providers shall not be accepted by the department after January 1, 1993.

(2) Valid training courses performed by Environmental Protection Agency (EPA) approved training providers in other states shall be accepted by the department provided that applicants have completed an approved course in Texas asbestos law and rules from a training provider licensed by the department. This requirement is effective June 1, 1993.

(3) The one-year period of validity following the effective date of a required asbestos course may be extended by completing the appropriate annual refresher training course. Failure to complete annual refresher training within two years of the most recent training shall require that the original course be repeated.

(4) A day of training shall consist of eight hours of actual classroom instruction, hands-on practical training sessions, and field trips in any suitable combination, including break periods.

(5) Courses requiring hands-on practical training must be presented in an environment that permits the trainees individually to have actual experience performing tasks associated with the appropriate asbestos activity studied. Hands-on training sessions shall maintain a student to instructor ratio of not more than ten to one (10:1). Demonstrations and audio-visuals shall not substitute for required hands-on training.

(b) Asbestos consultant training. Persons seeking to be licensed as an asbestos consultant under these sections shall complete an approved 40-hour training course as described in this subsection. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the course examination. The course shall adequately address:

(1) general information concerning asbestos, including health effects related to exposure;

(2) the role of the asbestos consultant and other consultants;

(3) regulatory, insurance, and legal aspects;

(4) personal hygiene and protective equipment;

(5) work practices and procedures;

(6) abatement project design, including control of airborne fibers, abatement options and evaluation, asbestos activity in occupied buildings, safety, and the preparation of drawings and specifications;

(7) asbestos sampling: description and demonstration of bulk material and air sampling methods and analysis;

(8) sampling for airborne fibers: equipment, calibration, and usage;

(9) compliance sampling: area, personal, clearance, and background sampling;

(10) recordkeeping and reporting: calculations, chain of custody, reports, and preparation of records;

(11) hands-on training: including a demonstration and explanation of the procedures of a complete abatement project, respirator fit-testing and maintenance, and sampling calibration and calculations; and

(12) course review and manual.

(c) contractor/supervisor training.

(1) Persons seeking to be licensed as an asbestos abatement contractor, asbestos abatement supervisor, project manager, asbestos competent person (under Occupational Health and Safety Administration requirements), or operations and maintenance (O&M) (restricted) supervisor, shall successfully complete an approved 36 hour contractor/supervisor training course (course) as described in this subsection. The course may be substituted for the asbestos abatement worker course; this substitution does not apply to annual refresher training.

(2) This training shall include lectures, demonstrations, audio-visuals, and at least six hours of hands-on training in-

cluding individual respirator fit testing, course review, and a written examination of 100 multiple-choice questions. Each trainee must score at least 70% or better on this exam to successfully complete the course. The course shall adequately address:

(A) physical characteristics of asbestos and asbestos containing material (ACM);

(B) potential health effects related to asbestos exposure;

(C) employee personal protective equipment;

(D) state-of-the-art work practices;

(E) personal hygiene;

(F) additional safety hazards;

(G) medical monitoring;

(H) air monitoring;

(I) relevant federal, state, and local regulatory requirements;

(J) establishment of respiratory protection programs and medical surveillance programs;

(K) hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance;

(L) insurance and liability issues;

(M) record keeping for asbestos abatement projects;

(N) supervisory techniques for asbestos abatement activities;

(O) contract specifications; and

(P) course review and manual.

(d) Asbestos abatement workers. Persons seeking registration as asbestos abatement workers shall successfully complete an approved three-day training course, as described in this subsection. Successful

completion of the contractor/supervisor training course shall also be acceptable as qualification for asbestos worker applicants. Worker training courses are recommended to have a classroom student-instructor ratio of not more than twenty-five to one (25:1). The worker training course shall include lectures, demonstrations, at least six hours of hands-on training including individual respirator fit testing, course review, and a written examination consisting of 50 multiple-choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) physical characteristics of asbestos and ACM;

(2) potential health effects related to asbestos exposure;

(3) employee personal protective equipment;

(4) state-of-the-art work practices;

(5) personal hygiene;

(6) additional safety hazards;

(7) medical monitoring;

(8) air monitoring;

(9) relevant federal, state, and local regulatory requirements;

(10) establishment of respiratory protective programs and medical surveillance programs;

(11) hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance; and

(12) course review and manual.

(e) Asbestos inspectors. Persons seeking to be licensed as asbestos inspectors shall successfully complete an approved three-day training course as described in this subsection. The inspector training course shall include lectures, demonstrations, hands-on individual respirator fit testing, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) background information of asbestos;

(2) potential health effects related to asbestos exposure;

(3) functions/qualifications and role of inspectors;

(4) legal liabilities and defenses;

(5) understanding of building systems;

(6) public/employee/ building occupant relations;

(7) pre-inspection planning, and review of previous inspection records;

(8) inspecting for friable and non-friable ACM;

(9) assessing of the condition of friable ACM;

(10) bulk sampling/documentation of asbestos;

(11) air monitoring;

(12) employee personal protective equipment;

(13) record keeping and writing of the inspection report;

(14) regulatory review;

(15) field trip or simulated building walk through inspection; and

(16) course review and manual.

(f) Management planners. Persons seeking to be licensed as management planners shall successfully complete the training program for inspectors, as described in subsection (d) of this section, plus an approved two-day asbestos management planner training course, as described in this subsection. The management planner course shall include lectures, demonstration, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) course overview;

(2) evaluation and interpretation of survey results;

(3) hazard assessment;

(4) legal implications;

(5) evaluation and selection of control options;

(6) role of other professionals;

(7) developing an operations & maintenance (O&M) plan; and

(8) regulatory review; and

(9) record keeping for the management planner;

(10) assembling and submitting of a management plan;

(11) financing abatement actions; and

(12) course review and manual.

(g) Air monitoring technician. Persons seeking to be licensed as air monitor-

ing technicians shall successfully complete an approved three day training course as described in this subsection. The air-monitoring technician course shall include lectures, demonstrations, hands-on individual respirator fit testing, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address the:

(1) health effects of asbestos;

(2) asbestos regulations (state and federal);

(3) asbestos sampling and evaluation methods;

(4) calculating sampling times;

(5) time weighted average calculation;

(6) calibration of air sample pumps;

(7) sample logs and records;

(8) compliance testing;

(9) clearance testing; and

(10) clearance procedures.

(h) Texas law and rules. Persons seeking any asbestos license with the department who submit out-of-state training as a means of qualification must successfully complete an approved course on Texas Asbestos Health Protection law which shall be conducted by a training sponsor licensed by the department. This requirement shall be completed prior to commencing any abatement within the state.

(i) Refresher training. All disciplines shall receive refresher training annually. Satisfactory completion of such training shall be a condition of renewal, and evidence of satisfactory completion shall be included in the annual renewal application.

§295.65. Training: Approval of Training Courses.

(a) General provision. Asbestos training courses shall be individually approved only for those training providers currently licensed by the Texas Department of Health (department). Applications for each course shall be made separately. The department shall consider prior teaching of the course applied for as a part of the approval process.

(b) Conditional approval. Conditional approval of an asbestos training course shall be granted to an applicant after all required information and documentation submitted has been found to meet the requirements set forth in these sections for approval of the course by the department.

(c) Complete approval. Complete approval of an asbestos training course shall be granted for a period of two years after the department has granted conditional approval, has conducted an on-site observation and evaluation of the training course, its instructors and its facilities, and has determined that the applicant's asbestos training course meets the requirements set forth in these sections.

(d) Applications. An applicant for approval of an asbestos training course must submit an application in writing to the department. Within 30 working days after receiving an application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. The department will approve or deny the application only upon receipt of the completed application which shall contain the following information:

(1) the name and address of the licensed training provider who will present the course, and the name and phone number of the responsible individual;

(2) the type of course for which approval is being requested;

(3) a detailed outline of the course curriculum including the amount of time allotted to each topic, the name and qualifications of the individual developing the instruction program for each topic, and copies or written materials to be distributed;

(4) a description of the type of equipment owned which must be used in all full-length courses for demonstrations and/or "hands-on" exercises, including but not limited to, types of respirators, negative air units, water spray devices, protective clothing, construction materials, high efficiency particulate air (HEPA) vacuum, air purifying panel, glove bags, shower unit, water filter assembly;

(5) documentation, including photos and details of assurance that the number of instructors, the amount of equipment and the facilities are adequate to provide the students with proper training;

(6) administration of a written multiple choice examination at the conclusion of the course. If copies of the exam are required by the department, measures to protect the confidentiality of the exam as proprietary information will be maintained by the department to the extent authorized by law. No later than July 1, 1993, the department will institute standardized tests for all categories requiring testing to be administered by the trainer; and

(7) establishment of the fact that the minimum grade which must be obtained for a trainee to successfully complete the course is 70%.

(e) Re-training (refresher) courses. For all disciplines except inspectors, a State accreditation program shall include a one-day annual refresher training course for re-accreditation. Refresher courses for inspectors shall be a half-day in length. Management planners shall attend the inspector refresher course, plus an additional half-day on management planning. Consultants need attend only a single annual refresher course for the project designer.

(f) Issuance of certificates. The training provider shall:

(1) issue certificates with their social security numbers to students who successfully pass the training course's examination. The certificate shall indicate the name of the student and the course completed, the date of the course and examination;

(2) issue a wallet-size photo-identification card, including a description of the course completed, the effective date, and the social security number of the trainee;

(3) submit the names and social security numbers, and 1" x 1" photo, on a form provided by the department, of students receiving an accreditation to the department within 10 days of the completion date of each course; and

(4) provide student with a 1" x 1" photo attached to a department application for license/registration.

(g) Revocation or suspension of approval. The department may revoke or suspend approval if field site inspections indicate a training course is not providing training that meets the requirements of the Model Accreditation Plan of these sections. Training course sponsors shall permit department representatives to attend, evaluate, and monitor any training course without charge. The inspection staff may not give advance notice of their inspections.

(h) Minimum number of instructors. Each course requiring approval according to the Model Accreditation Plan shall require at least the minimum number of instructors for that course as specified by EPA.

§295.67. Compliance: Policy of the Texas Department of Health. The department's policy is to gain compliance with these sections through voluntary efforts by all persons involved in asbestos-related activity in public buildings. Appropriate administrative and legal action will be sought where timely compliance is not accomplished. The type of action to be taken is within the discretion of the department.

§295.68. Compliance: Inspections and Investigations.

(a) The department shall maintain the right to inspect or investigate the practices of any person involved with asbestos-related activity in a public building.

(b) A department representative, upon presenting appropriate credentials, shall have the right to enter at all reasonable times any area or environment, including but not limited to any work area, building, construction site, storage, vehicle, or office area to inspect and investigate for compliance with these sections, to review records, to question any person, or to locate, identify, and assess the condition of asbestos and asbestos containing material.

(c) A department representative in pursuance of his official duties is not required to notify or seek permission to conduct inspections or investigations.

(d) Authority and responsibility for the qualifications, health status, and personal protection of department representatives resides with the department by law. A department representative shall not be impeded or refused entry in the course of his official duties by reason of any regulatory or contractual specification.

§295.69. Compliance: Reprimand, Suspension, Revocation.

(a) After notice to the licensee of an opportunity for a hearing in accordance with subsection (e) of this section, the department may reprimand the licensee or modify, suspend, suspend on an emergency basis, or revoke a license under this Texas Asbestos Health Protection Act.

(b) If the department suspends a license on an emergency basis, the suspension is effective immediately. The department shall then provide an opportunity for a hearing in accordance with subsection (e) of this section within 20 days after the date of the emergency suspension.

(c) The department may reprimand any licensee, or may suspend, or revoke a license for:

(1) failure to comply with any provision of the Texas Asbestos Health Protection Act (Act), any rule adopted by the Board of Health, any order issued by the department or a court;

(2) failure to comply with applicable federal or state standards for licensed asbestos activities;

(3) failure to maintain or falsification of records as required by these sections; and

(4) failure to meet the qualifications for which one holds a license; or

(5) fraudulently or deceptively obtaining or attempting to obtain a license or contract for an asbestos-related activity.

(d) If the department receives three validated complaints against a licensed supervisor and finds that the supervisor has, on three separate occasions, violated or has permitted workers under his supervision to violate the Act or these sections, the department shall:

(1) revoke the supervisor's license and issue a worker registration that is valid for six months;

(2) after that period, the individual may re-apply for a supervisor's license; and

(3) such revocation shall provide for a hearing according to the provisions of subsection (e) of this section (relating to contested case hearings).

(e) The contested-case hearing provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a shall apply to any enforcement action proposed to be taken under this section. The formal hearing procedures of the department in Chapter 1 of this title (relating to Board of Health) shall also apply.

(f) If a license issued under these sections has been suspended, the individual(s) and/or organizations named in the suspension are not eligible to reapply for licensing under this section for one year.

(g) If a license issued under these sections has been revoked, the individual(s) and/or organizations named in the revocation are not eligible to reapply for licensing under these sections for three years.

§295.70. Compliance: Administrative Penalty.

(a) If a person violates the Texas Asbestos Health Protection Act (Act), or a rule adopted or order issued under the Act, the Texas Department of Health (department) may assess an administrative penalty.

(b) The penalty shall not exceed \$10,000 a day per violation. Each day a violation continues may be considered a separate violation. The total penalty will be the sum of all individual violation penalties.

(c) In assessing administrative penalties, the department shall consider the:

(1) history of previous violation(s);

(2) seriousness of the violation(s);

(3) hazard to the health and safety of the public; and

(4) demonstrated good faith, and any other matter which justice may require.

(d) Individual violations may be reduced or enhanced based on the considerations listed in subsection (c) of this section, or any others that justice may require. A maximum reduction or enhancement of 50% per individual violation may be considered, based on the facts presented to the department.

(e) A person is subject to double the initial penalty on second finding of violation of any provision of the act or rules. Third and subsequent violations of a provision are subject to five times the initial penalty.

(f) Violations shall be placed in one of the following severity levels.

(1) Critical violation-severity Level III covers violations that are most significant and have a direct negative impact on public health and safety. The base penalty for Level III violation on first occurrence will not exceed \$2,000 per day, per violation. Examples of Level III violations include, but are not limited to:

(A) failure to establish effective containment during abatement of friable material;

(B) permitting disposal of friable asbestos containing material (ACM) at uncontrolled sites;

(C) working without a license or with improper license;

(D) failure to adequately prevent public entry to potentially contaminated areas; and

(E) failure to submit a notification.

(2) Serious violation-severity Level II covers violations that are significant and which, if not corrected, could threaten public health and safety. The base penalty for Level II violations on first occurrence will not exceed \$200 per day, per violation. Examples of Level II violations include, but are not limited to:

(A) failure to maintain material in a wet condition;

(B) working with a lapsed license; and

(C) submitting an improper notification.

(3) Significant violation-severity Level I covers violations that are of more than minor significance and, if left uncor-

rected, could lead to more serious circumstances. This category shall include fraud and misrepresentation. The base penalty for Level I violations on first occurrence will not exceed \$50 per day, per violation. Examples of Level I violations include, but are not limited to:

(A) no soap available in shower facilities;

(B) inadequate storage for clothing in the "clean room"; and

(C) failure to have worker certificate on a job site.

(g) The person charged with the violation will be given the opportunity for a hearing conducted in accordance with the applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures in Chapter 1 of this title (relating to Board of Health).

(h) The hearing regarding a proposed administrative penalty may be consolidated with another hearing on an administrative penalty.

(i) If the person charged with the violation fails to request a hearing within 30 days following receipt of a notice of violation, an administrative penalty may be assessed after the commissioner of health has determined that a violation did occur and the amount of the penalty is warranted.

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

Issued in Austin, Texas, on April 27, 1992.

TRD-9205744 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: June 27, 1992

For further information, please call: (512) 834-6600

◆ ◆ ◆
**Part II. Texas Department
of Mental Health and
Mental Retardation**

**Chapter 401. System
Administration**

**Subchapter B. Interagency
Agreements**

• **25 TAC §401.56**

The Texas Department of Mental Health and Mental Retardation proposes new §401.56, concerning Biennial revision and updating of

the Texas long-term care plan for the elderly. Senate Bill 377 of the 72nd Texas Legislature requires specified state agencies to adopt by rule a memorandum of understanding that clearly defines the responsibilities of each agency in biennially revising and updating of the Texas long-term care plan for the elderly.

Leilani Rose, director, Financial Services Department, has determined that there will be no significant fiscal implications for state or local government as a result of enforcing the section as proposed.

Steven Shon, M.D., deputy commissioner, Mental Health Services, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the promulgation of rules consistent with law. There will be no effect on small businesses. There is no cost to persons required to comply with the section as proposed. There is no significant local economic impact anticipated.

Comments on the proposal may be submitted to Linda Logan, Director, Policy and Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas. 78711-2668.

The new section and is proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers

§401.56. Biennial Revision and Updating of the Texas Long-term Care Plan for the Elderly.

(a) TXMHMR adopts by reference as Exhibit M a joint memorandum of understanding with Texas Department on Aging (TDoA), TDHS, and TDH concerning biennial revision and updating of the Texas Long-Term Care Plan for the Elderly.

(b) Copies of the plan are filed in the Office of Policy Development, Texas Department of Mental Health and Mental Retardation, 4405 North Lamar, Austin, Texas 78756, and may be reviewed during regular business hours.

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

Issued in Austin, Texas, on April 22, 1992.

TRD-9205588 Ann Utley
Chairman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: June 1, 1992

For further information, please call: (512) 465-4670

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Traffic Supervision

• 37 TAC §3.62

The Texas Department of Public Safety proposes an amendment to §3.62, concerning regulations governing transportation safety. The amendment adds subsection (e) which will clarify the authority of the department to inspect the safety records of a motor carrier subject to the regulations adopted under Texas Civil Statutes, Article 6701d, §139.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Lester Mills, captain, traffic law enforcement, also has determined that for each year of the

first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the public that a motor carrier is in compliance with all statutes and regulations pertaining to safe transportation of persons, property, and hazardous materials. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000

The amendment is proposed under Texas Civil Statutes, Article 6701d, §139, which provide the Public Safety Commission with the authority to adopt such regulations as may be deemed necessary for the safe operation of motor carriers.

§3.62. Regulations Governing Transportation Safety.

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

(e) Any officer or employee of the department certified for this purpose may enter the premises of a motor carrier to inspect lands, buildings, and

equipment and copy or verify the correctness of any records, reports, or other documents required to be kept or made pursuant to the regulations adopted by the director. The inspection may be conducted at a reasonable time on stating the purpose and presenting to the motor carrier appropriate credentials and a written statement to the carrier from the department or Attorney General of the officer's or employee's inspection authority.

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

Issued in Austin, Texas, on April 16, 1992.

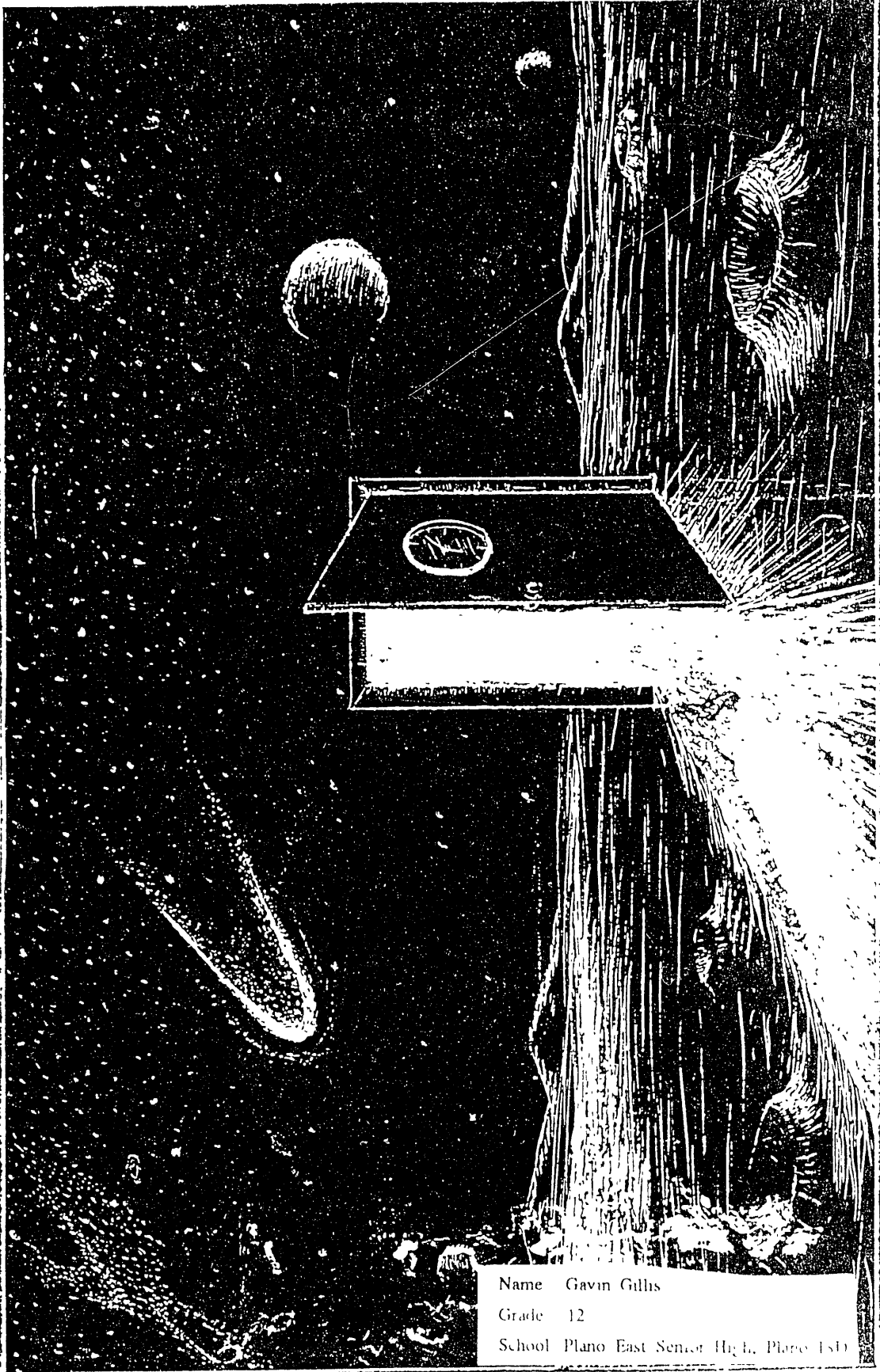
TRD-9205675

James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: June 1, 1992

For further information, please call: (512) 465-2000





Name Gavin Gillis

Grade 12

School Plano East Senior High, Plano ISD

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 filing or 20 days after filing. If 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 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 112. Scope of Liability for Compensation

Subchapter E. Professional Athletes Election of Coverage

• 28 TAC §112.401, §112.402

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed new §112.401, §112.402, submitted by the Texas Workers' Compensation Commission has been automatically withdrawn, effective April 21, 1992. The new §112.401, §112.402 as proposed appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5814).

TRD-9205666



Chapter 120. Compensation Procedures-Employers

• 28 TAC §120.3

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed new §120.3, submitted by the Texas Workers' Compensation Commission has been automatically withdrawn, effective April 21, 1992. The new §120.3 as proposed appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5815).

TRD-9205665





Name: Greg Church

Grade: 11

School: Plano East Senior High, Plano ISD

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 4. AGRICULTURE Part VII. Texas Agriculture Resources Protection Authority

Chapter 101. General Rules

Subchapter A. Routine Procedures

• 4 TAC §§101.1-101.3

The Texas Agriculture Resources Authority (the Authority) of the Texas Department of Agriculture adopts new §§101.1-101.3 concerning routine procedures. Section 101.1 and §101.3 are adopted with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6186). Section 101.2 is adopted without changes and will not be republished.

The new sections are intended to clarify the procedures to be followed by the authority in conducting the general routine operations authorized by the Texas Agriculture Code (the Code), §76.009 (1989). The new sections further define key terms found both in the Code, §76.009 and in Chapter 101. The authority has adopted the new sections with some changes that are made to correct a spelling error and to make the sections consistent with the requirements of the Code, §76.009.

Section 101.1 is adopted with changes. Under the definition of "member", subparagraph (E) has been changed to clarify that the representative member from the Texas Water Commission is the chief of the section responsible for groundwater conservation. This change is necessary due to a recent reorganization of the Water Commission which eliminated the position of chief of groundwater conservation. Under the definition of "pesticide agency", a typographical error is corrected to reflect that the Texas Water Commission, rather than the Texas Water Commission is a pesticide agency.

Section 101.3 is adopted with changes. Subsections (b) and (c) have been changed to clarify that upon being offered a gift or grant, the Authority shall seek the governor's approval, and upon receipt of that approval may comply with the terms and conditions of any such gift or grant. These changes make the section consistent with the requirements of the Code, §76.009, which does not provide for a presumption of approval if approval is not received within a certain period of time.

The new sections provide definitions for key terms used in Chapter 101, provide general procedures and requirements regarding board meetings of the Authority, and provide

procedures for acceptance of gifts or grants by the Authority.

No comments were received regarding adoption of the new section.

The new sections are adopted under the Texas Agriculture Code, §76.009, which authorizes the Texas Agriculture Resources Authority to promulgate rules and regulations, not inconsistent with the code, as may be necessary to carry out the activities set out within the code in respect to pesticides.

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

Act—Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Authority—Agriculture Resources Protection Authority.

Code—Texas Agriculture Code.

Commissioner—The commissioner of the Texas Department of Agriculture.

Department—The Texas Department of Agriculture.

Gift—Money or any other thing of value, real, personal or mixed, tangible or intangible. The terms includes any devise or bequest.

Governor—The Governor of the State of Texas.

Member—

(A) the director of the Texas Agricultural Experiment Station;

(B) the dean of the College of Agricultural Sciences of Texas Tech University;

(C) the dean of the University of Texas School of Public Health at Houston;

(D) the director of the environmental epidemiology program of the Texas Department of Health;

(E) the head of that section of the Texas Water Commission responsible for groundwater conservation;

(F) the director of the Institute for International Agribusiness Studies of Prairie View A&M University;

(G) a person appointed by the governor to represent the interests of consumers;

(H) a producer of agricultural products appointed by the governor; and

(I) the commissioner of agriculture.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

Pesticide agency—The Texas Department of Agriculture, the State Soil and Water Conservation Board, the Texas Agricultural Extension Service, the Texas Department of Health, the Texas Water Commission, or the Texas Structural Pest Control Board.

Petition—A petition for adoption of a proposed rule or for repeal or amendment of an existing rule.

Petitioner—Any person who has by written petition applied for or sought the adoption of a proposed rule or the repeal or amendment of an existing rule.

Pleading—Any written petition, answer, motion, or other written instrument filed with the authority with respect to any authorized proceeding.

Rule—Any statement of general applicability of a pesticide agency that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements relating to the management, regulation, and control of pesticides. The term includes the amendment or repeal of a prior rule which relates to the management, regulation, and control of pesticides but does not include statements concerning only the internal management or organization of any pesticide agency and not affecting private rights or procedures.

Texas Register—Official publication of the Secretary of State's Office created by the Act, §6.

§101.3. Gifts.

(a) The Texas Agriculture Resource Protection Authority (the authority) may accept any unconditional gift, devise, or bequest.

(b) Upon being offered a gift requiring compliance with specified terms or conditions, the authority shall submit the matter, with its recommendations, to the governor for approval.

(c) With the Governor's approval, the authority may comply with terms and conditions of any grant to accomplish any of the purposes of the authority.

(d) It shall be the responsibility of the authority to see to it that compliance is made with the terms or conditions applicable to any accepted gift, devise, or bequest. The responsibility may be delegated to the member representing the agency most likely to benefit from the gift.

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

Issued in Austin, Texas, on April 23, 1992.

TRD-9205739 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: May 15, 1992

Proposal publication date: November 1, 1991

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

◆ ◆ ◆
TITLE 19. EDUCATION
Part II. Texas Education
Agency

Chapter 61. School Districts

Subchapter G. School Facilities

Emergency Facility Grant
Funds

• **19 TAC §§61.91-61.94**

The Texas Education Agency adopts new §§61.91-61.94, concerning agency facility grant funds, with changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1583).

The sections are necessary to alleviate emergency needs for acquiring, constructing, renovating, or improving capital assets and instructional facilities during the 1992-1993 school year. The changes are made to correct rule structure and grammatical errors.

The new sections establish guidelines under which the State Board of Education (SBOE) will allocate \$50 million in emergency grant funds to school districts, focusing specially on districts with high tax rates, high growth rates, low property values, and buildings which constitute an imminent threat to safety.

On individual comment in favor of the rules, Somerset ISD commented against the rules, arguing that they would not provide for equitable distribution of emergency grants. The Texas Education Agency believes that

the guidelines for emergency grants prescribed in the new sections comply with legislative intent.

The new sections are adopted under the Texas Education Code, §15.16, which provides the State Board of Education with the authority to make grants to school district in the 1992-1993 school year to alleviate emergency needs and to establish procedures and qualifications for obtaining a grant.

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

Imminent threat—An immediate danger to students and staff due to either current exposure or high risk of exposure in emergency situations. Examples include, but are not limited to, exposed electrical hazards, current exposure to toxic chemicals through daily use in an unsafe environment, structural damage that endangers the immediate integrity of the building, and blind corridors posing a substantial threat in emergency exit situations. Examples would not include: failure of pre-existing buildings to meet safety standards for new buildings, asbestos abatement under a pre-existing abatement plan, or inadequate handicap accessibility.

Project—A set of activities to repair, renovate, or add to existing facilities to address a specific, limited need. As an example, the addition of vent hoods in the chemistry labs would be considered a project. Within the same building, the addition of fire escapes for exit from a blind corridor would be considered a separate project. Districts may propose multiple projects per building.

§61.92. District Prioritization.

(a) Districts will be given a funding priority based on three factors.

(1) The first factor is district rank of property wealth per weighted student in the 1991-1992 school year, defined as the State Property Tax Board value used in state aid distribution in that year divided by the number of weighted students for guaranteed yield purposes. This factor will receive a weight of 55%.

(2) The second factor is district rank of average total effective tax rate from 1989-1991, defined as tax collections divided by the State Property Tax Board value used in state aid distribution in those years. This factor will receive a weight of 30%.

(3) The third factor is district rank of growth rate from 1989-1990 through 1994-1995, defined as the projected average daily attendance for 1994-1995 divided by the attendance in 1989-1990. This factor will receive a weight of 15%.

(b) Rankings will each be rated to create a composite score for the district. The composite score will be the result of the formula: $.55(\text{rank of district wealth}) + .30(\text{rank of tax rate}) = .15(\text{rank of growth rate})$. The composite scores will then be rank ordered to determine priorities for funding projects.

§61.93. Project Eligibility.

(a) Districts will be notified of their eligibility to receive a grant based on the ranking produced pursuant to §61.92(b) of this title (relating to District Prioritization) and the availability of funds. Districts will be notified that:

(1) they are eligible to receive a grant for a qualified project;

(2) they may be eligible to receive a grant for a qualified project if funds remain available; or

(3) they are ineligible to receive a grant.

(b) Districts will be eligible for funding for one or more school facilities renovation or construction projects by submitting a written application for funds to the Central Education Agency.

(c) Districts must submit a project plan and the associated costs to the commissioner of education. The commissioner will determine the format for applications and will make the final determination of project eligibility.

§61.94. General Requirements

(a) The provisional entitlement for a district will be the lesser of a grant of no more than \$150 per weighted pupil in average daily attendance in 1991-1992 or the cost of the qualified project.

(b) Projects funded under this program must be completed by February 28, 1995. Funds granted must be used for the projects for which the grants were made.

(c) Once the \$50 million provide for under this rule has been expended, there are no further entitlements under this grant.

(d) School districts must apply for funding no later than a date set by the commissioner. Documentation of need for the proposed project will be required.

(e) The commissioner of education shall be responsible for interpretation of the terms and conditions of this rule and shall make final determinations of project eligibility and awards.

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

Issued in Austin, Texas, on April 16, 1992.

TRD-9205628

Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: March 3, 1992

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

◆ ◆ ◆
**Chapter 97. Planning and
Accreditation**

**Subchapter A. General Provi-
sions**

The Texas Education Agency adopts the repeal of §§97.1-97.11 and 97.21-97.39, concerning planning and accreditation, without changes to the proposal as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1584).

The chapter is being repealed in accordance with the sunset review process mandated by the 71st Legislature in Senate Bill 1. The State Board of Education (SBOE) has reviewed the old chapter and is proposing a new Chapter 97 in a separate submission.

No comments were received regarding adoption of the repeals.

• **19 TAC §§97.1-97.11**

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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

Issued in Austin, Texas, on April 16, 1992.

TRD-9205638

Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: March 3, 1992

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

◆ ◆ ◆
• **19 TAC §§97.1-97.6**

The Texas Education Agency adopts new §§97.1-97.6, concerning planning and accreditation. Section 97.4 and §97.5 are adopted with changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1585). Sections 97.1-97.3 and §97.6 are adopted without changes and will not be republished.

The new sections are being adopted in accordance with the sunset review process mandated by the 71st Legislature in Senate Bill 1. The changes in §97.4 add to the

criteria of gains in and equity of performance considered in the accreditation process. The changes in §97.5 clarify the requirements concerning evaluation reports and the procedures for responding to such reports.

The new sections establish requirements and procedures for the performance based accreditation process, emphasizing excellence and equity in student performance.

Comments on the proposed new sections concerned refining performance criteria, the process of reporting evaluations, and appeals procedures. Comments were received from the Texas Association of School Boards (TASB) and the Association of Texas Professional Educators (ATPE). The State Board of Education disagrees with one comment made by ATPE concerning campus grouping. The board considers this issue irrelevant to accreditation ratings.

The new sections are adopted under the Texas Education Code, §21.753, which provides the State Board of Education with the authority to adopt rules for the accreditation of school districts.

§97.4. Criteria for Accreditation.

(a) The academic excellence indicators adopted by the State Board of Education shall be the main consideration of the Central Education Agency in the rating of a district. Performance on the academic excellence indicators required by this section shall be used for the purposes of evaluation, accreditation, and determination of exemplary status. Performance information on each of the academic excellence indicators shall be used to establish a longitudinal performance data base. The indicators must be based on information that is disaggregated with respect to race, gender, age, and socioeconomic status. Use of the academic excellence indicators in the rating process shall include consideration of:

(1) adequate campus and district performance under the indicators adopted;

(2) the relation between the academic excellence indicators adopted by the board and the campus performance objectives established under the Texas Education Code, §21.7532;

(3) an analysis of annual gain in performance from one school year to the next in respect to each academic excellence indicator; and

(4) an analysis of the equity of performance among student population subgroups.

(b) Gain in performance and district planning and decision-making toward improved student performance will be considered in determining final district accreditation status following the on-site review.

(c) Other criteria which must be considered include the following:

(1) the relevance of the relationship between the goals and objectives of the district and student performance;

(2) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under statutory authority;

(3) information by grades, gender, ethnicity or race, and economic status pertaining to discipline rates, suspensions, placements in in-school suspension, alternative placements, corporal punishment, and other disciplinary sanctions, and reasons for disciplinary interventions;

(4) the quality of the district's appraisal of teacher performance and of administrator performance;

(5) the effectiveness of the district principals as instructional leaders;

(6) the effectiveness of the district's campuses on the basis of the most current criteria identified by research on effective schools;

(7) the fulfillment of curriculum requirements;

(8) the effectiveness of the district's programs in special education based on the Central Education Agency's most recent compliance review of the district and programs for special populations;

(9) the effectiveness of teacher in-service training;

(10) the effective use of technology to enhance student achievement;

(11) the effectiveness of the district's remedial and support programs under the Texas Education Code, §21.557, for students at risk of dropping out of school;

(12) the effectiveness of the district's dropout prevention and recovery programs;

(13) efficient allocation of available resources;

(14) the presence and quality of comprehensive and developmental guidance and counseling programs on campuses;

(15) the quality and effectiveness of the district's vocational education program;

(16) the manner in which the campus performance objectives were established and the progress, of the campus in meeting the objectives;

(17) the quality of learning on each of the district's campuses based on indicators including scores on achievement tests;

(18) current information on any outstanding agency requests in respect to financial or compliance audits, or civil rights issues;

(19) the quality of the district's planning for site-based decision-making;

(20) the effectiveness of the school district's ability to provide physical facilities that are safe and designed to meet the educational needs of all students in an environment conducive to learning; and

(21) the effectiveness of the school district's ability to govern and manage the operations of the district in accordance with statewide standards and duties of a school board member.

§97.5. The Accreditation Process.

(a) For the purpose of issuing accreditation ratings, not less than once every six years, each school district in the state shall receive an accreditation visit. This rating will be based on the district's performance on the accreditation criteria as described in §97.4 of this title (relating to Criteria for Accreditation) and its history in respect to compliance with state and federal laws. Based on standards established by the commissioner of education, districts will be assigned an appropriate accreditation rating.

(b) At least once every six years, or as required in the Texas Education Code, §21.754, each district will receive a complete review of all accreditation criteria, utilizing the regular periodic compliance review by the Texas Education Agency staff.

(c) The commissioner shall establish the level of frequency of on-site visits, and the level of investigative review needed, dependent upon the district's performance as measured annually on academic excellence indicators, the history of the district's equity and performance trends, history of compliance with state and federal laws, and health and safety issues.

(d) The accreditation on-site review process shall normally be conducted by a select group of peers of professional district staff and board members. Whenever practicable, the majority of the members of the accreditation review teams shall be composed of persons who have experience in school districts similar to the districts they are assigned to review as part of the accreditation review process. Agency staff will manage and facilitate the peer review process. The team will review, gather, and analyze data pertaining to student performance, district and campus planning and decision-making, compliance, equity, governance, health, and safety. The team shall report its on-site visit findings to the commissioner. Agency staff will review all performance reports, compliance reports, other pertinent district records and findings of the review team, and the commissioner will determine the district's accreditation status in respect to standards established by the commissioner of education.

(e) At any time under certain circumstances the commissioner may order a

review team composed of Texas Education Agency staff.

(f) In order to be considered for the status of recognized or exemplary, districts must request and receive an optional peer on-site review.

(g) Districts that receive the status of academically unaccredited will be reviewed on-site at least annually to determine the level of oversight and/or technical assistance required, and to monitor progress in respect to student performance, compliance, and other indicators of improvement.

(h) Districts that receive the status of accredited, advised will be reviewed on-site at least every two years to determine the level of oversight and/or technical assistance required, and to monitor progress in respect to student performance, compliance, and other indicators of improvement.

(i) The Central Education Agency shall give written notice to the superintendent and board of trustees of each district before a scheduled accreditation visit.

(j) The procedures to be followed during the on-site accreditation visits will be established by the commissioner of education.

(k) The on-site review team shall obtain information from campus administrators, teachers, parents, and students. Information from parents and teachers will be obtained in a manner that prevents the campus or district from screening the information.

(l) At the conclusion of a district's accreditation visit, the accreditation team shall orally report its preliminary findings to administrators and representatives from the board of trustees, as appropriate. District representatives may, if they wish, respond to the preliminary report orally during the closing session. The district may also make written responses to the preliminary findings.

(m) A draft report shall be sent to the district. Within 12 days of receipt of the draft report, the district may request informal resolution of any disagreement with the draft report. The district may submit written comments or may request a conference with the agency to discuss the contents of the draft report. The draft report shall become final and shall become a public document subject to provisions of the Texas Open Records Act:

(1) upon completion of the informal resolution;

(2) upon receipt of a request for a hearing; or

(3) upon expiration of 12 days after the district receives the report if no hearing or informal resolution is requested.

(n) The report must be reviewed in its entirety by the board of trustees at a regularly scheduled board meeting as soon thereafter as possible.

(o) To determine if a district qualifies for a higher rating, upon request from the district the commissioner of education may direct the agency to conduct an on-site accreditation review.

(p) At any time upon the identification of potential problems the commissioner of education may direct the agency to conduct outside investigations and may raise or lower a district's accreditation rating as a result of such investigations.

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

Issued in Austin, Texas, on April 16, 1992

TRD-9205640 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: March 3, 1992

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

◆ ◆ ◆
Subchapter B. Principles and Standards for Accreditation

• 19 TAC §§97.21-97.39

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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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Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

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Proposal publication date: March 3, 1992

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

◆ ◆ ◆
Chapter 133. Pupil-School Relations

Subchapter A. General Welfare of Pupils

The Texas Education Agency adopts the repeal of §§133.1, 133.21-133.28, 133.41,

133.61, 133.101, 133.121, and 133.122, concerning pupil-school relations, without changes to the proposal as published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 786).

The chapter is being repealed in accordance with the sunset review process mandated by the 71st Legislature in Senate Bill 1. The State Board of Education (SBOE) has reviewed the old chapter and is proposing a new Chapter 133 in a separate submission.

No comments were received regarding adoption of the repeals.

• 19 TAC §133.1

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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-9205631
Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: January 31, 1992

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

◆ ◆ ◆
Subchapter B. Discipline Management

• 19 TAC §§133.21-133.28

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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-9205632
Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: January 31, 1992

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

◆ ◆ ◆
• 19 TAC §§133.21-133.24

The Texas Education Agency adopts new §§133.21-133.24, concerning pupil-school re-

lations, with changes to the proposed text as published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 787).

The sections are being adopted in accordance with the sunset review process mandated by the 71st Legislature in Senate Bill 1. Most of the changes correct grammar and punctuation errors. The changes in §133.23 remove the phrase that requires school districts to hold a hearing on expulsion within seven school days of the offense when the student is placed in an alternative education program. The change is made in response to public comment.

The new sections establish guidelines concerning discipline management programs.

One individual commented on the importance of discipline in the educational system. The Texas Association of School Boards commented on §133.23, recommending the changes being adopted in this submission.

The new sections are adopted under the Texas Education Code, §21.701, which requires the State Board of Education to review and approve or reject discipline management programs proposed by school districts.

§133.21. *Discipline Management Programs.* Content of approved programs is as follows.

(1) The board of trustees shall provide in the contents of the plan for the following.

(A) The board of trustees shall provide in the contents of the plan the development of a code of student conduct that, at a minimum, includes rules, procedures, and expectations related to conduct and specifies the consequences of violating the code. The school district shall explain what it will consider to be "serious" and "persistent" misbehavior in its discipline management program and student code of conduct. The code of student conduct shall initially be published and distributed to all administrators, teachers, parents, and students. Thereafter, the code of student conduct shall be provided for each newly employed administrator and teacher and newly enrolled student, parent or guardian, and to others upon request. The discipline management plan of each district shall provide for procedures to communicate the provisions of the code of student conduct to parents and all interested parties. Changes during the year in the code of student conduct shall be published and distributed to students in a timely manner.

(B) The district shall provide annually for signed statements by each student's parent that the parent understands and consents to the responsibilities outlined in the district's student code of conduct.

(2) The district's discipline management plan shall specify who may

serve as the student's representative, the district's hearing officer at any hearing required by the Texas Education Code, §21.301 and §21.3011, and shall set forth the district's notice and hearing procedures.

(3) The school district's outline of its alternative educational program shall be included in its discipline management plan.

§133.22. *Suspension of Student: Removal to Alternative Education Programs.*

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

(1) Class disruption—Any behavior which violates the rules of a particular classroom and interferes with the teacher's opportunity to present material or the other students' opportunity to concentrate on the material or their assignments.

(2) Community-based alternative school—A program for students who have been removed from the students' assigned campus for disciplinary reasons and placed in an alternative education program operated by a school district in cooperation with other school districts, juvenile agencies, or other governmental entities.

(3) Discipline management technique—Any action which is intended to promote proper behavior and/or discourage misconduct other than suspension or expulsion including, but not limited to, rewards and incentives, student-teacher conferences, parent-teacher conferences, teacher redirection of student behavior, negative assertion, logical consequences, setting limits, I-messages, student contracts, active listening, reality therapy, suspension of extracurricular activities, detention, etc.

(4) Expulsion—Suspension of a student from school for more than six school days within a semester.

(5) Home-based instruction—An unsupervised alternative education program in which students are provided assignments to be completed at home. Except for students who are provided home-based instruction pursuant to the Texas Education Code, §21.3011(h) and §133.23(b)(3) of this title (relating to Expulsion), students may not be assigned to home-based instruction or be suspended for more than a combined total of six school days in a semester.

(6) In-school suspension program—An on-campus setting for students who commit disciplinary infractions, where the student continues to receive instruction in each course to the extent possible.

(7) Parents—Includes single parent, legal guardian, or person in lawful control.

(8) School-based strategies—A program(s) which uses interactive strategies between school personnel and the community and/or state agencies to provide a full array of services for the prevention of or intervention in delinquent behavior of students. These services may include conflict resolution, alternative education, student assistance teams, peer jury or fairness committee, behavioral contracts, contingency education plans, and alternatives to expulsion.

(9) School-community guidance center—A program that meets the requirements for school-community guidance centers as specified under the Texas Education Code, §§21.601-21.606.

(10) School property—Any property owned by the school district or over which the school district or its personnel exert lawful authority, including property visited by students in connection with a school-sponsored activity, such as a field trip or extracurricular activity.

(11) Suspension—A deprivation of educational services for disciplinary reasons for a period not to exceed six school days in a semester. A district may adopt a policy to provide students with assignments during the period of suspension. Such a policy shall not interfere with a teacher's ability to instruct the remaining students in that class. In all cases, students must be given an opportunity to complete assignments pursuant to the Texas Education Code, §21.301(h).

(12) Transfer to a different school campus—The removal of a student from his or her assigned campus to another campus within the same school district.

(b) Grade adjustment. A district that imposes a grade adjustment for work made up by a student who has been suspended shall adopt a policy that ensures consistent application.

(c) Emergency removal.

(1) The board of trustees or its designee may remove a student from his or her regular classes or from school district premises for nondisciplinary health, safety, or welfare reasons whenever the board or its designee determines that an emergency exists for doing so. Reasons which may be considered an emergency include, but are not limited to, the fact that the student is under the influence of alcohol or drugs, highly agitated, or suffering from any other condition which temporarily threatens his or her welfare, other individuals' welfare, or the efficient operation of the school. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the

parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel. Such removal must be for as short a time as is reasonable under the circumstances, but is limited to five consecutive school days.

(2) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

§133.23. Expulsion.

(a) Definition. The definitions set forth in §133.22 of this title (relating to Suspension of Students: Removal to Alternative Education Programs) are applicable to this section.

(b) Expulsion procedure.

(1) The student may only be expelled by written order setting the term of the expulsion.

(2) Before the expulsion, the board or its designee must provide the student a hearing at which the student is afforded requisite due process which shall include the following:

(A) prior notice of the charges and the proposed sanctions as to afford a reasonable opportunity for preparation;

(B) right to a full and fair hearing before the board or its designee;

(C) right to an adult representative or legal counsel;

(D) opportunity to testify and to present evidence and witnesses in his or her defense; and

(E) opportunity to examine the evidence presented by the school administration and to question the administration's witnesses.

(3) Pending the expulsion hearing, a student may be placed in home-based instruction provided that the hearing shall be held within seven school days from the date of the offense. The date of the hearing may be deferred beyond the seven days only by the mutual consent of the student's parent or guardian and the district's representative.

§133.24. Discipline of Students with Handicaps. Disciplinary actions regarding students with handicaps shall be in accordance

with §133.22 of this title (relating to Suspension of Students: Removal to Alternative Education Programs) and §133.23 of this title (relating to Expulsion) except as noted in this section.

(1) Students with handicaps. For the purpose of this section, a student with a handicap is a student who has been evaluated in accordance with 34 Code of Federal Regulations, §§300.530-300.534 and §89.233 of this title (relating to Comprehensive Individual Assessment) and determined by an admission, review, and dismissal (ARD) committee as meeting the eligibility criteria for orthopedically handicapped, other health impaired, auditorially handicapped, visually handicapped, deaf-blind, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, multiply handicapped, or traumatic brain injured, who because of those impairments needs special education and related services.

(2) Suspension or removal to an alternative education program.

(A) Students with handicaps may be suspended in the same manner as students without handicaps for a period not to exceed six school days or removed to an alternative education program for a period not to exceed 10 consecutive school days.

(B) Students with handicaps may not be suspended for more than six days or removed to an alternative education program for more than 10 days unless the ARD committee first determines whether the alleged behavior in question was related to the handicapping condition. If the ARD committee determines there is a connection, they must also determine what action is appropriate.

(C) The term of a student's removal to an alternative education program shall be assessed in accordance with the requirements of the Texas Education Code, §21.301(d), and 34 Code of Federal Regulations, §300.513 (relating to child's status during proceedings). However, removal for more than 10 consecutive school days may be effected only through ARD committee action, subject to the parents' right to appeal.

(3) Emergency removal.

(A) Emergency removal of a student with a handicap from a class or school for health, safety, or welfare reasons may only be done for compelling reasons as noted in §133.22(c) of this title and shall not exceed five consecutive school days except as set out in subparagraphs (B) and (C) of this paragraph. Any student who is removed from school premises pursuant to

this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel.

(B) Removal under this section is intended to be used in emergency situations only and consecutive five school day removals are prohibited unless the ARD committee determines that the student poses an immediate threat to the safety of himself or herself or others, or disrupts the safety of the learning environment.

(C) If the ARD committee determines that a student is dangerous pursuant to subparagraph (B) of this paragraph, but the parents appeal the decision pursuant to the Individuals with Disabilities Education Act procedures and refuse to permit a change of placement, the school must obtain immediate injunctive relief from a state or federal court in order to remove the student for more than 10 consecutive days.

(D) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(4) Removals totaling 16 school days. When the total number of days a student with a handicap is removed to an alternative education program, suspended, or removed for emergency reasons totals 16 school days in any one school year, an ARD committee review of the student's individual education plan (IEP) shall be conducted unless such removal is warranted in the student's discipline management plan specified in the student's IEP.

(5) Sanctions specified in students' IEP. The requirements of §133.22 of this title and paragraphs (2) and (3) of this subsection shall not apply to disciplinary sanctions implemented in accordance with specifications in the student's IEP. If the student's IEP contains disciplinary sanctions and is not being challenged in an administrative or court appeal pursuant to the Individuals with Disabilities Education Act, then those sanctions in the IEP should be followed rather than the requirements of §133.22 of this title and paragraphs (2) and (3) of this subsection.

(6) Expulsion of students with handicaps.

(A) Expulsion may be effected for a student with a handicap who is

engaging in conduct which would warrant such action for a student without handicaps under §133.23 of this title only if the ARD committee determines the misconduct is not related to the handicapping condition or inappropriate placement.

(B) The exclusion of a student with a handicap from his or her current placement, pending appeal of an expulsion, may not exceed 10 days without ARD committee action (subject to the parents' rights to appeal under the Individuals with Disabilities Education Act and the status quo provisions of 34 Code of Federal Regulations, §300.513) to determine appropriate services in the interim.

(C) In determining whether a student's disruptive behavior was related to a student's handicapping condition, the ARD committee shall base its decision on currently effective evaluation and assessment data and on review of the current IEP documentation rather than on established eligibility or previous committee decisions. The committee shall consider whether the student's behavior indicates the need for new assessment or evaluation data. Unless the parents agree otherwise, the student must be returned to his or her current placement after 10 days while additional assessments are being conducted.

(D) The ARD committee shall determine the instructional and related services to be provided during the time of expulsion. The student's IEP shall include goals and objectives designed to assist in returning the student to school and preventing significant regression.

(E) If the ARD committee determines that the student's disruptive behavior is related to the handicapping condition or inappropriate placement, the student shall not be expelled. If the disruptive behavior on the part of the student indicates an inappropriate placement, the ARD committee shall review the placement and recommend alternatives.

(F) If the ARD committee determines that the behavior was related to the handicapping condition, then the ARD committee shall:

(i) rewrite the IEP to address the behavioral and educational needs of the student; or

(ii) when appropriate, consider the extension of an emergency removal pursuant to paragraph (3)(B) of this subsection.

(7) Parent participation in ARD committee meetings. The provisions of

§89.222(d) of this title (relating to Parent Participation in ARD Committee Meetings) and 34 Code of Federal Regulations, §300.513 (relating to child's status during proceedings) are applicable in circumstances arising under this section.

(8) Referral for assessment. Local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for assessment. However, a regular education student is not entitled to avoid disciplinary action pending any assessment.

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

Issued in Austin, Texas, on April 16, 1992.

TRD-9205637 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: January 31, 1992

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

Subchapter C. Pupil's Report Cards or Records

• 19 TAC §133.41

The repeal is adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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-9205633 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

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

Subchapter D. Married Pupils

• 19 TAC §133.61

The repeal is adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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-9205634 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

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

Subchapter F. Exemption from Instruction

• 19 TAC §133.101

The repeal is adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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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Planning and
Evaluation
Texas Education Agency

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

Subchapter G. Pupil Organizations

• 19 TAC §133.121, §133.122

The repeals are adopted under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the SBOE to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

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-9205636 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

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Proposal publication date: January 31, 1992

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

Chapter 149. Education Personnel Development

Subchapter C. Appraisal of Certified Personnel

• 19 TAC §149.43

The Texas Education Agency adopts an amendment to §149.43, concerning teacher appraisal procedures, with changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1587).

The amendment is necessary to afford district appraisers more time to redirect efforts to those teachers most in need of assistance. The changes to the amendment occur in subsection (c)(1) and allow districts to reduce the frequency of appraisal of level three teachers who have passed the written portion of the master teacher examination. The changes are made in response to public comment.

The amendment provides more flexibility in the Texas teacher appraisal system and changes the frequency of observations, conditions for scoring, and conference requirements.

One individual commented on the amendment, recommending the changes being adopted in this submission.

The amendment is adopted under the Texas Education Code, §§13.302-13.304, which provides the State Board of Education with the authority to adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder level assignment.

§149.43. Teacher Appraisal Procedures.

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

(c) Appraisals, observations, and conferences.

(1) At least two appraisals are required each year for each probationary teacher and each teacher on career ladder level one who does not meet the state's minimum criteria for advancement to level two. The first appraisal shall be formative. It shall be scored, but not be used for career ladder assignment. Teacher on level one who have met the state's minimum requirements for advancement to level two, but who have not been assigned to level two because of school district stricter performance criteria, and teachers on levels two, three, and four on the career ladder whose performance was exceeding expectations or clearly outstanding on the most recent overall summative performance score, shall be appraised at least once each year. Teacher on career ladder levels two, three, or four whose performance on the most recent overall summary performance score was less than exceeding expectations shall have at least two appraisals. Each teacher on career ladder level three who has passed the written portion of the master teacher com-

prehensive examination required for entry to level four and whose most recent overall summary performance score was evaluated as clearly outstanding shall receive one appraisal during the school year every other year. During the school year in which a formal teacher appraisal will not be conducted for the teacher, the district is authorized to substitute a formative appraisal instrument as an alternative.

(2) (No change.)

(3) School districts which use the minimum of two appraisers during any appraisal period shall provide for an observation by a third appraiser if requested by a teacher due to a variance of 15 or more points between the sum of the domain subtotals for Domains I-IV awarded by the teacher's supervisor and the sum of the domain subtotals for Domains I-IV awarded by the other appraiser. Each district shall adopt procedures for uniform implementation of this procedure within the district.

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

(6) Fifty percent of the formal observations must be scheduled by day and time of day, and 50% of the formal observations must be scheduled within a reasonable period of time designated by the local district and uniformly applied for all teachers. If a formal observation by a third appraiser from another campus is required, that observation must be scheduled by day and time of day.

(7)-(10) (No change.)

(11) For level one teachers who receive two appraisals, the supervisor shall conduct a pre-conference with the teacher prior to the supervisor's formal observation. The pre-conference shall be conducted within a reasonable period of time prior to the observation. Following each formal observation, an appraiser must conduct a post-observation conference with the teacher if the teacher's performance is judged less than meets expectations in one or more domains. Regardless of the teacher's performance, each teacher supervisor must conduct a post-observation conference after each formal observation. Appraisers other than the teacher's supervisor are encouraged to conduct post-observation conferences after all formal observations. Required post-observation conferences must be held within 10 working days of the formal observation. If there are extenuating circumstances, the 10 working day requirement may be extended to a maximum of 15 working days. At the conclusion of the first appraisal period, a conference will be held at the request of either the teacher or the appraiser.

(d)-(e) (No change.)

(f) Summative appraisal.

(1) Each teacher must receive a summative conference at the end of the teacher's last appraisal period. In this conference, the teacher's supervisor will review the teacher's instructional goals and outcomes, inform the teacher of the domain performance scores and the overall summary performance score for the year, review the teacher's status relating to requirements for advancements and/or maintenance on the teacher career ladder, make recommendations regarding domains needing improvement, and address of a professional growth plan as appropriate. The teacher's supervisor and the teacher shall also discuss teacher self-assessment aspect such as the goals of the individual teacher, campus planning, instructional strategies, and student outcomes during the summative conference.

(2)-(3) (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 April 16, 1992.

TRD-9205630 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

Effective date: May 14, 1992

Proposal publication date: March 3, 1992

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

Subchapter D. Teacher Career Ladder

• 19 TAC §149.81

The Texas Education Agency adopts an amendment to §149.81, concerning advanced academic training (AAT), with changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1588)

The amendment is necessary to streamline the procedures for approving ATT programs, thereby redirecting efforts toward improvement of instruction. The change in subsection (c)(1) directs the commissioner of education to prescribe the forms of a statement of assurance. The change is made to clarify procedures involving statements of assurance.

The amendment authorizes the approval of sponsors of AAT rather than individual programs; requires that approved sponsors provide for follow-up activities to stimulate participant use; discontinues the required pre- and post-assessment of workshop participants; and deletes provisions that AAT be taken in addition to required inservice education.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.315, which requires the

State Board of Education to accredit higher education course work and AAT.

§149.81. Advanced Academic Training.

(a) General provisions. Advanced academic training is staff development based upon diagnosed needs or professional goals. Priority shall be given to strengthening needs identified through the appraisal and accreditation process. The purpose of advanced academic training is to improve classroom instruction for increased student performance. Such training must be highly structured to meet the requirements of the Texas Education Code, §13.315. A teacher must have prior district approval for any training to be considered for advanced academic training.

(b) (No change.)

(c) Sponsors and presenters.

(1) Each sponsor shall be approved by the Texas Education Agency based on the written statement of assurances. The statement of assurances shall be in a form prescribed by the commissioner of education. Workshops or class must be sponsored by a school district, a college or university, and education service center, a professional organization, or a governmental agency. A program by a private firm must be sponsored by one of the entities in this subsection.

(2) It shall be the responsibility of the approved sponsor to assure that each presenter has documented expertise in the topic of the workshop or class. The qualifications of presenters shall be verified by the program sponsor.

(3) (No change.)

(d)-(e) (No change.)

(f) Approval of sponsors. Each sponsor shall be approved to provide advanced academic training based upon statements of assurance provided to the Texas Education Agency. Approved sponsors will receive documentation indicating the approved status.

(g) Review of sponsors. Approved sponsors will be reviewed by the Texas Education Agency at least every five years with the review and audit of approved sponsors scheduled at any time. All sponsoring agencies will maintain approved status unless otherwise notified by the agency.

(h) Follow-up activities. Each approved sponsor shall provide follow-up activities to determine the participants' utilization of the newly acquired knowledge/skills and to provide technical assistance in implementing acquired techniques in the classroom.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 16, 1992.

TRD-9205629 Criss Cloudt
Coordinator, Policy
Planning and
Evaluation
Texas Education Agency

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Proposal publication date: March 3, 1992

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

Child Care Management Services Statewide Implementation

• 40 TAC §§10.3413, 10.3463, 10.3464

The Texas Department of Human Services (DHS) adopts amendments to §§10.3413, 10.3463, and 10.3464, concerning family self-support services, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2117).

The amendments are justified to clarify conditions under which child care is extended to more families.

The amendments will function by clarifying that extended child care benefits may be offered to transitional child care clients under certain conditions, and by correcting the policy statement concerning state income limits on CCDBG-funded child care.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

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

Issued in Austin, Texas, on April 27, 1992.

TRD-9205734 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: June 1, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 450-3765

Chapter 47. Primary Home Care

Service Requirements

The Texas Department of Human Services (DHS) adopts amendments to §§47.2910, 47.3901, and §47.5901. The amendment to §47.2910 is adopted with changes to the proposed text as published in the February 14, 1992, issue of the *Texas Register* (17 Tex Reg 1273). The amendments to §47.3901 and §47.5901 are adopted without changes and will not be republished.

Justification for the amendments is the assurance of continual service delivery to meet priority one clients' basic needs.

The amendments will function by establishing a policy of no service breaks for clients, classified as priority one, who are totally dependent on attendant care to meet their basic needs.

No comments were received regarding adoption of the amendments. The department is adopting §47.2910 with a correction to the reference in §47.2910(c)(1) which now reads "the service break is caused by circumstances described in §47.2914(a) and (b) of this title (relating to Suspension of Services)."

• 40 TAC §47.2910

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§47.2910. Service Breaks.

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

(c) The provider agency must ensure that a Priority 1 client is not without authorized/scheduled services after service initiation unless:

(1) the service break is caused by circumstances described in §47.2914(a) and (b) of this title (relating to Suspension of Services);

(2) the client is not at home when the attendant is scheduled to provide services; or

(3) the client requests that services not be provided on a specific day(s).

(d) The provider agency must notify the caseworker within seven days of the service break by using the department's case information form. The form must include the reason for the service break.

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

Issued in Austin, Texas, on April 24, 1992.

TRD-9205699

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 15, 1992

Proposal publication date: February 14, 1992

For further information, please call: (512) 450-3765

Support Documents

• 40 TAC §47.3901

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on April 24, 1992.

TRD-9205700

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 15, 1992

Proposal publication date: February 14, 1992

For further information, please call: (512) 450-3765

• 40 TAC §47.5901

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on April 24, 1992.

TRD-9205701

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 15, 1992

Proposal publication date: February 14, 1992

For further information, please call: (512) 450-3765

Chapter 48. Community Care for Aged and Disabled

Eligibility

• 40 TAC §48.2911, §48.2918

The Texas Department of Human Services (DHS) adopts amendments to §48.2911 and

§48.2918, concerning eligibility for primary home care, with changes to the proposed text as published in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1273).

Justification for the amendments is assurance of continual service delivery to meet priority one clients' basic needs.

The amendments will function by establishing a policy of no service breaks for clients, classified as priority one, who are totally dependent on attendant care to meet their basic needs. This zero service break policy may help an individual choose community care services in place of institutional care.

The department received comments from the Texas Association for Home Care (TAHC) concerning the definition of a Priority 1 client. Citing potential liability issues, TAHC recommended that the terms "health" and "safety" be deleted from the definition. In addition, TAHC recommended that the wording "would be jeopardized" be changed to "may be jeopardized."

In response to those comments, the department has decided to retain the terms "health" and "safety" in the definition. The department believes the terms "health" and "safety" are necessary to describe accurately those eligible for priority 1 designation. To address the concerns raised by TAHC, the department will amend the definition to read "... that there is a high likelihood the individual's health, safety, or well-being would be jeopardized..." to make clear that any harm to health and safety is not a certainty. The change appears in §§48.2911(d)(3) and 48.2918(e)(3).

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

§48.2911. Family Care.

(a)-(c) No change.

(d) Establishment of a priority level is made by the community care case manager and is based on an assessment of the client's circumstances and on discussions with the client and others actively involved with the client. A Priority 1 family care client is an individual who is dependent upon the services of the family care attendant for the performance of certain personal care tasks and whose health, safety, or well-being may be jeopardized if services on a normally-scheduled service shift were not provided. An individual is considered a Priority 1 family care client if the following criteria are met.

(1) The individual is completely unable to perform one or more of the following activities without hands-on assistance from another person:

(A) transferring himself into or out of bed or a chair or on or off a toilet;

(B) feeding himself;

(C) getting to or using the toilet;

(D) preparing a meal; or

(E) taking self-administered prescribed medications.

(2) During a normally-scheduled service shift, no one is readily available who is capable of providing, and who is willing to provide, the needed assistance other than the family care attendant.

(3) The DHS community care case manager determines that there is a high likelihood the individual's health, safety, or well-being would be jeopardized if family care services were not provided on a single given shift.

§48.2918. Eligibility for Primary Home Care.

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

(e) Establishment of a priority level is made by the community care case manager based on an assessment of the client's circumstances and on discussions with the client and others actively involved with the client. A Priority 1 primary home care client is an individual who is dependent upon the services of the primary home care attendant for the performance of certain personal care tasks and whose health, safety, or well-being may be jeopardized if services on a normally-scheduled service shift were not provided. An individual is considered a Priority 1 primary home care client if the following criteria are met.

(1) The individual is completely unable to perform one or more of the following activities without hands-on assistance from another person:

(A) transferring himself into or out of bed or a chair or on or off a toilet;

(B) feeding himself;

(C) getting to or using the toilet;

(D) preparing a meal; or

(E) taking self-administered prescribed medications.

(2) During a normally-scheduled service shift, no one is readily available who is capable of providing, and who is willing to provide, the needed assistance other than the primary home care attendant.

(3) The DHS community care case manager determines that there is a high

likelihood the individual's health, safety, or well-being would be jeopardized if primary home care services were not provided on a single given shift.

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

Issued in Austin, Texas, on April 24, 1992.

TRD-9205702 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 15, 1992

Proposal publication date: February 14, 1992

For further information, please call: (512) 450-3765

Chapter 53. Family Care Program

Service Delivery Requirements

• 40 TAC §53.403

The Texas Department of Human Services adopts amendments to §§53.403, 53.501, and 53.502, concerning Family Care Program. The amendment to §53.403 is adopted with a change to the proposed text as published in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1279). The amendments to §53.501 and §53.502 are adopted without changes and will not be republished.

Justification for the amendments is assurance of continual service delivery to meet priority one clients' basic needs.

The amendments will function by establishing a policy of no service breaks for clients, classified as priority one, who are totally dependent on attendant care to meet their basic needs. This zero service break policy may help an individual choose community care services in place of institutional care.

No comments were received regarding adoption of the amendments. The department is adopting §53.403 with a correction to the reference in §53.403(f)(1) which now reads "the service break is caused by circumstances described in §53.404(a) and (b) of this title (relating to Suspension of Services)."

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§53.403. Service Delivery Requirements.

(a)-(e) (No change.)

(f) The provider agency must ensure that a Priority 1 client is not without authorized/scheduled services after service initiation unless:

(1) the service break is caused by circumstances described in §53.404(a)

and (b) of this title (relating to Suspension of Services),

(2) the client is not at home when the attendant is scheduled to provide services; or

(3) the client requests that services not be provided on specific days.

(g) The provider agency must notify the caseworker within seven days of the service break by using the department's case information form. The form must include the reason for the service break.

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

Issued in Austin, Texas, on April 24, 1992.

TRD-9205703 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 15, 1992

Proposal publication date: February 14, 1992

For further information, please call: (512) 450-3765

Claims

• 40 TAC §53.501, §53.502

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on April 24, 1992.

TRD-9205704 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 15, 1992

Proposal publication date: February 14, 1992

For further information, please call: (512) 450-3765

Chapter 72. Memoranda of Understanding with Other State Agencies

Memoranda of Understanding for Long Term Care

• 40 TAC §72.102

The Texas Department of Human Services (DHS) adopts new §72.102, concerning the long term care state plan for the elderly, without changes to the proposed text as pub-

lished in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1605).

The justification for the new section is to fulfill the requirements of Senate Bill 377, 72nd Legislature, 1991, which requires that the Texas Department on Aging, the Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation, adopt by rule a memorandum of understanding (MOU) which clearly outlines each agency's responsibilities in biennially revising and updating the Texas long term care state plan for the elderly.

The new section will function by adopting the Texas Department on Aging's MOU which establishes its responsibilities for reviewing

issues concerning long term care (LTC) for the elderly; developing appropriate policy recommendations for the state; encouraging cooperative planning among public, private, and volunteer sectors for provision of LTC services; and to clarify how the four agencies named will work together for review, revision, and implementation of the Texas long term care state plan for the elderly.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 May 18, 1992.

TRD-9205735

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: May 18, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 450-3765



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of

the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance, at a board meeting scheduled on April 23, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, considered a proposal filed on behalf of the Texas Workers' Compensation Insurance Facility. The Facility proposed an amendment to the Facility's tabular surcharge plan. The amendment was proposed in a petition (Reference Number W-0292-9), filed by the the Facility on February 3, 1992. On April 23, 1992, the State Board of Insurance

adopted the amendment with changes to the proposed published text.

The amendment to the tabular surcharge as adopted lays out a new experience modifier range and a new tabular surcharge factor. The amendment further provides that risks with experience modification will be charged a mandatory differential factor of 15%. Risks with no experience modifier may be charged a differential factor of 50%. The complete amendment to the Texas Workers' Compensation Insurance Facility tabular surcharge plan including the experience modifier range and a new tabular surcharge factor is outlined as follows:

Experience Modifier Range	Tabular Surcharge Factor
0.01-.50	1.00
0.51-0.75	1.00
0.76-0.80	1.00
0.81-0.85	1.00
0.86-0.90	1.00
0.91-0.95	1.00
0.96-0.99	1.00
1.00	1.00
1.01-1.05	1.03
1.06-1.10	1.08
1.11-1.15	1.12
1.16-1.20	1.15
1.21-1.25	1.15
1.26-1.30	1.15
1.31-1.35	1.15
1.36-1.40	1.15
1.41-1.45	1.15
1.46-1.50	1.15
1.51-1.55	1.15
1.56-1.60	1.15
1.61-1.65	1.15
1.66-1.70	1.15
1.71-1.75	1.15

1.76-1.80	1.15
1.81-1.90	1.15
1.91-2.00	1.15
Over 2.00	1.15
No Mod	1.00

*Risks with experience modification will be charged a mandatory differential factor of 15%

*Risks with no experience modifier may be charged a differential factor of 50%

This amendment is effective 15 days after publication in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 April 27, 1992.

TRD-9205748 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: May 16, 1992

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

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The State Board of Insurance, at a board meeting scheduled on April 23, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, considered a proposal filed on behalf of the Texas Workers' Compensation Insurance Facility. The Facility proposed an amendment to the Facility's premium payment plan. The amendment was proposed in a petition (Reference Number W-0292-8), filed by the the Facility on February 3, 1992. On April 23, 1992, the State Board of Insurance adopted the amendment as proposed.

The amendment to the premium payment plan as adopted provides, in part, that in lieu of submitting the total estimated annual premium with this application, the Facility may permit one of three listed payment plans to risks demonstrating acceptable credit history. The plans would be filed based on the estimated annual premium calculated at the inception of the policy. An interest charge of 8.0% per annum is proposed. The amendment in its entirety follows:

In lieu of submitting the total estimated annual premium with this application, the Facility may permit one of the following payment plans to risks demonstrating acceptable credit history

	<u>Minimum</u>	<u>Payment</u>
	<u>Deposit</u>	<u>Plans</u>
\$2,999 or less	100%	None
\$3,000-\$9,999	50%	Three
\$10,000>	25%	Eleven

The payment plans will be fixed based on the estimated annual premium calculated at the inception of the policy. Monthly reporting of payrolls and premiums may still be required. The payments will be adjusted if the monthly reports indicate that the initial estimate of premium is significantly different from the initial estimate.

An interest charge of 8.0% per annum shall apply to all payment plans. This amendment is effective 15 days after publication in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

Issued in Austin, Texas, on April 27, 1992.

TRD-9205747 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: May 16, 1992

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

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 of Agriculture

Monday, May 4, 1992, 2 p.m. The Texas Agricultural Finance Authority of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Ninth Floor Conference Room, Austin. According to the complete agenda, the authority will discuss and act on April 10 meeting minutes; loan applications recommended by the Credit Review Committee; loan applications appealed to the Board; and discuss other business.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: April 24, 1992, 1:50 p.m.

TRD-9205697

Tuesday-Wednesday, May 5-6, 1992, 1:30 p.m. and 8 a.m. respectively. The Texas Wheat Producers Board of the Texas Department of Agriculture will meet on Tuesday at the Texas Commerce Bank Building, 2201 Civic Circle, Second Floor Board Room, Amarillo, and on Wednesday at the Havery Hotel, 3100 I-40 West, Ball Room, Amarillo. According to the agenda summary, on Tuesday the board will discuss approval of minutes of February meeting, hear financial report; discuss collections, refund and USWA trip reports; nutrition program; TDA's marketing structure and program; Austin meeting and TDA reports; and production, marketing and outlook situation report; On Wednesday, a call for action on reports and items from the previous day; report of USWA and WETEC Directors meetings; reports on NAWG and NAWG Foundation, and TDA Advisory Council meeting; ASCS update and report of Washington meetings; NAWG and USWA meetings and ACA Ag Day; Industrial Development Committee and seminar report; Wheat Foods Council update; individual activity reports; and call for action on morning reports.

Contact: Bill Nelson, Suite 803, Texas Commerce Bank, 2201 Civic Circle, Amarillo, Texas 79109, (806) 352-2191.

Filed: April 24, 1992, 3 p.m.

TRD-9205738

Wednesday, May 6, 1992, 9 a.m. The Texas Com Producers Board of the Texas Department of Agriculture will meet at the Radisson Plaza Hotel at the Austin Centre, 700 San Jacinto, Austin. According to the agenda summary, the board will discuss approval of the minutes; hear address by Texas Commissioner of Agriculture; discuss proposed changing of boundaries of voting Region 3 and 5; representation of Voting Region 1; swearing in new board members; election of new officers; presentation and action on financial statement; discuss C.D.'s and present interest rates; action on budget amendment; Houston City Council report; presentation and action on proposal for development of grain grading publication; discuss and act on proposal for nitrogen fertilizer rate and timing in corn; report and action on strategic planning session; presentation from Texas FFA Foundation; activity reports; Washington reports; meet in executive session to discuss evaluation and reassigning of duties of personnel in accordance with Texas Civil Statutes Annotated, Article 6252-17, §2(g); and discuss other business.

Contact: Carl L. King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: April 24, 1992, 3 p.m.

TRD-9205733

Thursday, May 7, 1992, 7:30 a.m. The Texas Grain Sorghum Producers Board of the Texas Department of Agriculture will meet at the Hyatt Regency DFW East Tower, Dallas/Fort Worth Airport. According to the agenda summary, the board will discuss and act on: minutes; financial reports; "Grain Sorghum News"; travel breakdown; research funding policy; research updates and proposals; other funding considerations; GSP operating board report; evaluation of renovating current office structure; and discuss other business.

Contact: Jack Eberspacher, P.O. Box 560, Abernathy, Texas 79311-0560, (806) 298-2543.

Filed: April 27, 1992, 4:21 p.m.

TRD-9205823

Thursday, May 14, 1992, 10 a.m. (Rescheduled from location only). The Texas Rice Producers Board of the Texas Department of Agriculture will meet at the Harris County Extension Center, #2 Abercrombie Drive, Houston. According to the complete agenda, the board will discuss approval of minutes of last meeting; assess revenue/expenses for current fiscal year and take appropriate budgeting action; project revenue and expense budget for 1992-1993 and possibly take action; and discuss other business.

Contact: Curtis Leonhardt, Texas Rice Council, 6699 Rookin, Houston, Texas 77074, (713) 270-6699.

Filed: April 27, 1992, 4:21 p.m.

TRD-9205824

Advisory Board of Athletic Trainers

Friday, May 1, 1992, 9 a.m. (Rescheduled from Friday, May 1, 1992). The Advisory Board of Athletic Trainers will meet at the Pitzer Board Room, Clayton Williams Alumni Center, Texas A&M University, George Bush Drive and Houston Street, College Station. According to the complete emergency revised agenda, the board will discuss approval of the previous meeting; consider and possibly act on reports of chairman, executive secretary, program administrator; continuing education and test committee report on spring exam; presentation by representative of North East Independent School District; board policies regarding: apprenticeship program guidelines; proposed changes to rules in Texas Administrative Code, Chapter 313; request for Attorney General Opinion on Texas Civil Statutes, Article 4512d; proposal for decision concerning Terry Alan Bunker, license number AT1108; discuss in executive session under §2(g) of Open Records Act and

discuss and act on in open session the appointment and duties of chairperson of the board's examination and continuing education committee; and hear announcements and comments not requiring board action. The emergency status is necessary as it is of urgent public necessity that the board take immediate action on appointment and duties of chairperson of the board's examination and continuing education committee prior to committee's next meeting.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615.

Filed: April 27, 1992, 3:31 p.m.

TRD-9205808

Texas Bond Review Board

Monday, May 4, 1992, 3 p.m. The Texas Bond Review Board will meet at the Clements Building, 300 West 15th Street, Room 101, Austin. According to the agenda summary, the board will call the meeting to order; consider proposed issues; discuss other business; and adjourn.

Contact: Tom Pollard, 300 West 15th Street, #409, Austin, Texas 78701, (512) 463-1741.

Filed: April 24, 1992, 3 p.m.

TRD-9205732

Children's Trust Fund of Texas Council

Wednesday-Thursday, May 6-7, 1992, 10 a.m. and 8:30 a.m. respectively. The Children's Trust Fund of Texas Council will meet at the Four Seasons Hotel, 98 San Jacinto Boulevard, Plaza Suite 516, Austin. According to the agenda summary, on Wednesday, the council will make introductions; overview of agenda; Legislative Budget Board's key performance targets quarterly reports; discuss internal control structure and control risk evaluation report; financial management reports; meet in executive session for open records request process and update; rules and management policy report; FY 1993-1998 strategic plan presentation; children's museum playscape escape program site visit; and request for proposals work session. On Thursday, the council will discuss request for proposal (RFP) selection; federal challenge grant overview; program report and recommendations; parent express interagency project; AVANCE program review; and VOICES: parents and providers speak out Intercultural Development Research Association (IDRA) report; and adjourn.

Contact: Sue Marshall, 8929 Shoal Creek

Boulevard, Austin, Texas 78758-6854, (512) 458-1281.

Filed: April 24, 1992, 9:19 a.m.

TRD-9205677

Texas Department of Commerce

Thursday, April 30, 1992, 1 p.m. The Texas Literacy Council of the Texas Department of Commerce held an emergency meeting at the John H. Reagan Building, 105 West 15th Street, Room 109, Austin. According to the agenda summary, the council called the meeting to order; heard public comment; staff reports; action items-continuation of RFPs current contracts; report on preliminary survey; proposal for resource center; conflict of interest/amendments to TLC by-laws; and adjourned. The emergency status was necessary due to lack of quorum.

Contact: Harold Stone, P.O. Box 12728, Austin, Texas 78711, (512) 320-9682.

Filed: April 23, 1992, 12:28 p.m.

TRD-9205642

Interagency Council on Early Childhood Intervention

Tuesday, May 5, 1992, 8:30 a.m. The Interagency Council on Early Childhood Intervention will meet at the Texas Department of Human Services, 701 West 51st Street, Room 4 West, Austin. According to the complete agenda, the council will receive public comments; discuss approval of minutes of previous meeting; discuss and possibly act on: proposed rules relating to third party billing and the determination of services needed section (25 TAC §621.23); proposed rules relating to requested federal changes to 25 TAC §§621.22, 621.23, 621.27, 621.30-621.33, 621.41-621.43, 621.44, 621.46 and 621.48; extension of early childhood intervention respite service development grant; increase of respite service development award of United Cerebral Palsy of Greater Houston for current budget period through July 31, 1992; requests from Public Health Region 8 Education Service Center and Brenham State School for reconsideration for expansion funding; Texas Commission on Alcohol and Drug Abuse/early childhood intervention project in Dallas and San Antonio; and the early childhood intervention strategic plan.

Contact: Mary Elder, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7673.

Filed: April 27, 1992, 3:31 p.m.

TRD-9205807

East Texas State University

Thursday, April 30, 1992, 1 p.m. The Board of Regents Student and University Advancement Committee met at East Texas State University, McDowell Administration Building, Commerce. According to the complete agenda, the committee gave a report on division activities; and distinguished alumnus awards.

Contact: Charles Turner, East Texas State University, McDowell Administration Building, Commerce, Texas 75429, (903) 886-5539.

Filed: April 23, 1992, 2:43 p.m.

TRD-9205649

Thursday, April 30, 1992, 1:15 p.m. The Board of Regents Executive Committee of East Texas State University met at East Texas State University, McDowell Administration Building, Commerce. According to the complete agenda, the committee reviewed and discussed amendment of bylaws Policy Number II C; amendment of statement on academic freedom, tenure and responsibility Policy II M; emeritus designation; determination of date and location of summer board meeting; and ETSU-Texarkana Foundation

Contact: Charles Tu... East Texas State University, McDowell Administration Building, Commerce, Texas 75429, (903) 886-5539.

Filed: April 23, 1992, 2:44 p.m.

TRD-9205651

Thursday, April 30, 1992, 1:15 p.m. The Board of Regents Academic Affairs Committee of East Texas State University met at East Texas State University, McDowell Administration Building, Commerce. According to the complete agenda, the committee heard report of division activities; ETSU-Commerce faculty promotions; ETSU-Texarkana faculty promotions; ETSU-Texas curriculum changes; amendment of voluntary modification of Employment Policy II N 9.1; amendment of Faculty Evaluation Policy II N 10; amendment of University Promotion Policy II N 10.1; and copyright policy.

Contact: Charles Turner, East Texas State University, McDowell Administration Building, Commerce, Texas 75429, (903) 886-5539.

Filed: April 23, 1992, 2:43 p.m.

TRD-9205650

Thursday, April 30, 1992, 1:45 p.m. The Board of Regents Campus Planning, Finance and Auditing Committee met at East Texas State University, McDowell Administration Building, Commerce. According to the complete agenda, the committee discussed adjustments in the: ETSU-

Commerce FY92 operating budget; ETSU-Texarkana FY92 operating budget; adoption of FY93 operating budget for ETSU-Commerce; adoption of FY93 operating budget for ETSU-Texarkana; adoption of FY93 tuition and fee schedule for ETSU-Commerce; adoption of FY93 tuition and fee schedule for ETSU-Texarkana; ETSU-Commerce housing system fee schedule; authorization to dispose of used furniture and equipment; and to proceed with roof repair projects.

Contact: Charles Turner, East Texas State University, McDowell Administration Building, Commerce, Texas 75429, (903) 886-5539.

Filed: April 23, 1992, 2:44 p.m.

TRD-9205652

Thursday, May 1, 1992, 9 a.m. The Board of Regents of East Texas State University will meet at East Texas State University, McDowell Administration Building, Commerce. According to the agenda summary, the board will approve its agenda and minutes of the meeting of February 21, 1992; receive a report from the president; consider motions and reports from the Student and University Advancement Committee; Academic Affairs Committee; Campus Planning, Finance and Auditing Committee; the executive committee; meet in executive session under the authority of sections (e), (g), and (r) of Article 6252-17, Vernon's Annotated Texas Civil Statutes.

Contact: Charles Turner, East Texas State University, McDowell Administration Building, Commerce, Texas 75429, (903) 886-5539.

Filed: April 23, 1992, 2:42 p.m.

TRD-9205648

Texas Education Agency

Friday, May 1, 1992, 8 a.m. The Texas Center for Educational Technology, Governing Board of the Texas Education Agency will meet at the Hurst-Euleless-Bedford Administration Office, 1849 Central Drive, Bedford. According to the complete agenda, the board will discuss rules committee report on by-laws; 1992-1993 board elections/membership; planning project results; personnel and budget report; status reports; and adjourn.

Contact: Delia R. Duffey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9092.

Filed: April 23, 1992, 4:28 p.m.

TRD-9205663

Friday, May 1, 1992, 9 a.m. The Commission on Standards for the Teaching Profession of the Texas Education Agency will

meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the complete agenda, the commission will hold orientation to Texas Education Network (TENET); and give progress report on Centers for Professional Development and Technology.

Contact: Ed Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: April 28, 1992, 11:37 a.m.

TRD-9205623

Texas Employment Commission

Tuesday, May 5, 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 approve prior meeting notes; meet in executive session to discuss Administristaff, Inc. versus James Kaster, et al; Total Fire Safety versus Texas Employment Commission; Bernardino Gonzales and Alma Barrera versus James J. Kaster, et al; and Society of Separationists, Inc., et al versus James J. Kaster, et al; actions, if any, resulting from executive session; staff reports; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 18; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: April 27, 1992, 4:07 p.m.

TRD-9205813

Texas Growth Fund

Wednesday, May 6, 1992, 9:30 a.m. The Board of Directors of the Texas Growth Fund will meet at the Teacher Retirement System Building, Fifth Floor, 1000 Red River Street, Austin. According to the agenda summary, the board will discuss approval of the April 1, 1992 minutes; receive report on approval of Declaration of Trust; approve Declaration of Trust and its execution; receive grantors' commitment letters; meet in executive session to receive report on search for executive director; select executive director and authorize execution of agreement with same; receive grantors' satisfaction letters; approve rules; receive report on insurance; engage insurance brokers/consultants; establish bank relationships; submit transfer notice to grantors; and appoint treasurer.

Contact: Jerry E. Turner, 816 Congress

Avenue, First City Centre, Austin, Texas 78701, (512) 495-8430.

Filed: April 27, 1992, 2:21 p.m.

TRD-9205775

Texas Department of Health

Friday, May 8, 1992, 9:30 a.m. The Dental Technical Advisory Committee of the Texas Department of Health will meet at the San Antonio Convention Center, 121 Alamo Plaza, San Antonio. According to the complete agenda, the committee will discuss approval of the minutes of the January 17, 1991 meeting; consider and possibly act on: program activities; women, infants and children intervention project; access to care concerns (children in Public Health Region 8); long-term care ad hoc committee report; long-term care/oral health initiatives; early periodic screening diagnosis and treatment transition progress/planning; and hear announcements and comments.

Contact: N. L. King, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7323.

Filed: April 27, 1992, 3:31 p.m.

TRD-9205806

Texas Health Policy Task Force

Thursday, April 30, 1992, 10 a.m. The Subcommittee on Finance of the Texas Health Policy Task Force met at the John H. Reagan Building, 105 West 15th Street, Room 105, Austin. According to the emergency revised agenda summary, the subcommittee reviewed and discussed rural health; migrant farm workers in Texas; rural hospitals in Texas; approaches to community health; subcommittee business; and adjourned. The emergency status was necessary as subcommittee could not have completed its task of fully investigating the issues it was charged with, without the addition of the presentations in the morning session and also completing its task of making recommendations to the full task force. Persons requiring interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: April 24, 1992, 1:11 p.m.

TRD-9205696

Tuesday, May 5, 1992, 5 p.m. The Texas Health Policy Task Force will meet at the Texas Tech University Regional Academic Health Center, 4800 Alberta Avenue, Misenheimer Auditorium, El Paso. According to the complete agenda, the task force

will take public testimony from persons wishing to address the members with regard to health care issues. Persons wishing interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: April 24, 1992, 1:11 p.m.

TRD-9205710

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Texas High-speed Rail Authority

Friday, May 1, 1992, 10 a.m. The Texas High-speed Rail Authority will meet at the LBJ Library Auditorium, 26th and Red River Streets, Austin. According to the complete agenda, the authority will hold a briefing for elected officials on environmental impact statement process for Texas high-speed rail project; presentation by environmental consultant; and questions and answers period.

Contact: Alan Rutter, 823 Congress Avenue, Suite 1502, Austin, Texas 78701, (512) 478-5484.

Filed: April 23, 1992, 4:49 p.m.

TRD-9205667

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Texas Department of Housing and Community Affairs

Thursday, April 30, 1992, noon. The Programs Committee of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs, Suite 300, Austin. According to the complete emergency revised agenda, the committee considered and possibly acted on selection of Master Servicer for 1992 Single Family Bond Program. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Mario Aguilar, 811 Barton Springs, Suite 300, Austin, Texas 78704, (512) 474-2974.

Filed: April 27, 1992, 3:11 p.m.

TRD-9205799

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Texas Department of Human Services

Thursday, May 7, 1992, 10 a.m. The CCS Advisory Council and Child Care Programs of the Texas Department of Human Ser-

vices will meet at the Thompson Conference Center, 26th and Red River Streets, Room 2.120, Austin. According to the complete agenda, the committee meetings will convene; introduction of Deputy Commissioner for Client Self-support Services; remarks from deputy commissioner; overview on DHS strategic plan; overview and discussion of client self-support services strategic plan; strategic plan discussion; and adjourn.

Contact: Lucretia Dennis-Small, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-4921.

Filed: April 27, 1992, 3:56 p.m.

TRD-9205812

Friday, May 8, 1992, 9:15 a.m. The Medical Care 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 hear opening comments; deputy commissioner's comments; discuss approval of minutes; various reports; hospital reporting requirements; PASARR rules regarding alternate placement; reimbursement methodology for case management for children who are blind or visually impaired; EPSDT dental program; third party resource rules; Texas medicaid reimbursement methodology related rule changes; reimbursement to licensed professional counselors and certified social workers-advanced clinical practitioners; cost-of-living index for inpatient hospital reimbursement methodology; department review of eligibility or payments for disproportionate share hospitals; eyeglass supplier agreement; feedback on advisory committee recommendations; open discussion by members; plan next meeting; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-3053.

Filed: April 27, 1992, 4:29 p.m.

TRD-9205825

◆ ◆ ◆
Texas Department of Insurance

Tuesday, May 5, 1992, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will consider a petition filed on behalf of the Texas Association of Mutual Insurance Companies requesting authorization for publication of a proposed new rule which would exempt farm mutual insurance companies from the new statutory requirement of an actuarial certification of loss reserves.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: April 27, 1992, 3:18 p.m.

TRD-9205804

Tuesday, May 5, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Sydney Bochat, of Moulton, who holds an Adjuster's license. Docket Number 11473.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 27, 1992, 1:44 p.m.

TRD-9205773

Tuesday, May 5, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the restatement with amendments of the Articles of Incorporation of Texas Thompson Funeral Insurance Company, Jacksonville, changing the name of the company, changing the location of the home office, and increasing the authorized capital. Docket Number 11471.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 27, 1992, 1:43 p.m.

TRD-9205772

Wednesday, May 6, 1992, 9 a.m. The Texas Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Anthony Charles Dearbonne, of Dayton and Houston, who holds a Group I, Legal Reserve Life Insurance Agent's license and Solicitor's license. Docket Number 11469.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: April 27, 1992, 1:42 p.m.

TRD-9205771

Thursday, May 21, 1992, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a pub-

lic hearing to consider proposed changes to the Texas Automobile Insurance Plan, as presented in an amended petition filed by the Office of Public Insurance Counsel, ("OPIC") in Docket Number 1871. Additionally, the State Board of Insurance may consider amending the TAIP as outlined in the Plan under Part 8, Administration; any amendments presented by or on behalf of the governing committee or the OPIC; and any other matter relating to changes to the operation of the Plan.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 27, 1992, 3:37 p.m.

TRD-9205809

Lamar University System

Wednesday, April 29, 1992, 9 a.m. The Chairman's Special Appointed Committee for Study of Policy Manual of the Board of Regents of Lamar University System met at the John Gray Institute, Office of Chancellor Conference Room, 855 Florida, Beaumont. According to the complete agenda, the committee reviewed, discussed and made recommendations on policy manual; met in executive session, held under provisions of Vernon's Civil Statutes, Article 6252-17, paragraph 3(g), personnel, to discuss duties of various system officers.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: April 24, 1992, 3 p.m.

TRD-9205740

Texas Department of Licensing and Regulation

Thursday, April 23, 1992, 4 p.m. (Rescheduled from April 24-25, 1992). The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation held an emergency meeting at the Guest Quarters Suite Hotel, 303 West 15th Street, Suite 213, Austin. According to the agenda summary, the commission called the meeting to order; took roll call and certification of quorum; met in executive session under authority of Article 6252-17, §2(g) to interview applicants; discussed the selection of an executive director; and adjourned. The emergency status was necessary due to a reasonable unforeseeable situation, the commission no longer had a quorum on Saturday, April 25, 1992; therefore, the starting time for the meeting had been changed to start at 4 p.m., April 23, 1992. The interviewees affected by this change consented.

Contact: Jack W. Garison, 920 Colorado Street, Austin, Texas 78701, (512) 463-2925.

Filed: April 23, 1992, 12:42 p.m.

TRD-9205643

Friday, April 24, 1992, 8:30 a.m. (Rescheduled from April 24-25, 1992). The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation met at the Guest Quarters Suite Hotel, 303 West 15th Street, Suite 213, Austin. According to the emergency revised agenda summary, the commission called the meeting to order; took roll call and certification of quorum; met in executive session under authority of Article 6252-17, §2(g) to interview applicants; discussed selection of an executive director; and adjourned. The emergency status was necessary due to a reasonable unforeseeable situation, the commission no longer had a quorum on Saturday, April 25, 1992; therefore, the starting time for the meeting had been changed to start at 4 p.m., April 23, 1992. The interviewees affected by this change consented.

Contact: Jack W. Garison, 920 Colorado Street, Austin, Texas 78701, (512) 463-2925.

Filed: April 23, 1992, 12:42 p.m.

TRD-9205644

Friday, May 8, 1992, 10 a.m. The Texas Industrialized Building Code Council of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the agenda summary, the council will review minutes of last meeting; department update; effect of Article 9102, elimination of Architectural Barriers Act, on industrialized housing and buildings; code interpretations; Steelgard request for an exemption from Department Rule 70.70(b)(11) and SBC Appendix J; energy conservation; DRA Performance; and approval of third parties.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: April 24, 1992, 8:15 a.m.

TRD-9205672

Texas Council on Offenders with Mental Impairments

Tuesday, May 5, 1992, 3 p.m. The Program Committee of the Texas Council on Offenders with Mental Impairments will meet at the TDCJ-Pardons and Paroles Di-

vision, 8610 Shoal Creek Boulevard, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; hear public comments; explanation of reorganization of Program Committee; discuss pilot project issues; and adjourn.

Contact: Pat Hamilton, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406.

Filed: April 23, 1992, 5:03 p.m.

TRD-9205668

Midwifery Board of the Texas Department of Health

Friday, May 8, 1992, 10 a.m. The Midwifery Board of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete agenda, the board will adopt minutes of previous meeting; consider and possibly act on: documentation; informed choice (data and transfer information); Department of Health Bureau of Vital Statistics mailout; courses scheduled and planned; report on birth center; report from Complaint Committee; report from Education Sub-Committee on recommendations, student status, and educational programs for "grandmothering"; and report from Continuing Education Sub-Committee.

Contact: Joey Alexander, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: April 27, 1992, 3:31 p.m.

TRD-9205805

Texas Board of Licensure for Nursing Home Administrators

Friday, April 24, 1992, 8 a.m. The Texas Board of Licensure for Nursing Home Administrators met at the Holiday Inn-North, 6911 North IH-35, Austin. According to the emergency revised agenda summary, the board heard committee reports: Education Committee discussed qualifications for continuing education sponsors; acceptance of degrees from accredited non-approved long term care programs; recommendations on tests; recommendations for preceptor curriculum; video/audio continuing education credit; partial credit for continuing education in usual circumstances; waiver requests; Policy and Procedure Committee discussed board policy and heard public comment; board policy on quorum; adoption of final rules on disciplinary proce-

dures; adoption of final rules on application procedures; proposed rules on definitions of nursing home administrator practice of nursing home administrations, and administrator of record; Finance Committee reviewed financial report; heard request for additional funding; and proposed rule on education assistance fee. The emergency status was necessary as board action items added.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: April 23, 1992, 4:01 p.m.

TRD-9205659

Texas Optometry Board

Wednesday-Thursday, May 6-7, 1992, 2 p.m. and 8:30 a.m. respectively. The Texas Optometry Board will meet at the Driskill Hotel, Sixth and Brazos Streets, Austin. According to the complete agenda, the following committees will meet: Investigation-Enforcement Committee; Continuing Education Committee; all committees meeting; special meeting will begin on Thursday to consider reports of secretary-treasurer; committee chairpersons, legal counsel, and executive director; discuss unfinished business, adoption of proposed Rule 275.2(g); and discuss TMOD examination; new business to consider IAB reports and future meeting; correspondence from representative regarding §§5.11, 5.14 and 5.15, §5.04(g) related to exams performed at industrial companies; Opinion of Attorney General Request 304, therapeutic optometry matters; opticians registry; strategic plan; duplicate license requests; accreditation of University of Houston; and meet in executive session in compliance with Article 6252-17, Vernon's Annotated Civil Statutes, §2(e).

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: April 27, 1992, 3:48 p.m.

TRD-9205810

Texas State Board of Physical Therapy Examiners

Thursday, May 7, 1992, 1 p.m. The Texas State Board of Physical Therapy Examiners will meet at the Hyatt Regency, Mesquite Room, Houston. According to the agenda summary, the board will discuss approval of minutes; requests for licensure approval; Sunset review update; House Bill 7; hear committee reports; executive director report; discuss approval of proposed rules; and hear chairperson's report.

Contact: Sherry L. Lee, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: April 28, 1992, 9:08 a.m.

TRD-9205837

Public Utility Commission of Texas

Monday, May 4, 1992, 9 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 an interim hearing in Docket Number 11094 and Tariff Control Number 10950-application of Southwestern Bell Telephone Company for approval of a Plexar-Custom customer-specific contract for American Airlines.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1992, 3 p.m.

TRD-9205715

Friday, May 8, 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 prehearing conference in Docket Number 11036-application of Southwestern Public Service Company for approval of calculation of House Bill 11 tax adjustment factors.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 27, 1992, 2:51 p.m.

TRD-9205792

Thursday, May 14, 1992, 10 a.m. (Rescheduled from April 28, 1992, 1:30 p.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 prehearing conference in Docket Number 11032-application of Southwestern Electric Service Company for approval of calculations of House Bill 11 tax adjustment factors for 1992, pursuant to Substantive Rule 23.21.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1992, 3 p.m.

TRD-9205713

Tuesday, May 19, 1992, 10 a.m. (Rescheduled from Monday, April 27, 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 10302-complaint of Donald Wilcox against Greentree Village North, Garrett Brothers.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 27, 1992, 2:51 p.m.

TRD-9205791

Friday, May 29, 1992, 10 a.m. (Rescheduled from Monday, April 27, 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 prehearing conference in Docket Number 11025-application of AT&T Communications of the Southwest, Inc. for approval of calculation of House Bill 11 tax adjustment factors for 1992 pursuant to PUC Substantive Rule 23.21(d).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1992, 3 p.m.

TRD-9205709

Monday, June 15, 1992, 9 a.m. (Rescheduled from May 14, 1992, 9 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 10831-application of Southwestern Bell Telephone Company to revise its tariff to redefine the point of Demarcation ("Demarc") and the location of the network.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 27, 1992, 2:50 p.m.

TRD-9205789

Tuesday, June 16, 1992, 10 a.m. (Rescheduled from June 9, 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 10883-application of Brazos Electric Power Cooperative, Inc. for a certificate of convenience and necessity for proposed generating facilities.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1992, 3 p.m.

TRD-9205714

Monday, July 13, 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 10757-application of Southwestern Bell Telephone Company to revise Section 5 of the general exchange tariff to add an additional feature for Plexar-I, alternate answering outside systems.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1992, 3 p.m.

TRD-9205712

Tuesday, July 21, 1992, 10 a.m. (Rescheduled from Monday, June 8, 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 10929-application of Contel of Texas, Inc. to establish the rules, regulations, and rates for the provisions of Universal Emergency Service (911).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 24, 1992, 3 p.m.

TRD-9205711

Tuesday, September 8, 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 10999-application of Houston Lighting and Power Company to amend CCN for proposed transmission line within Harris County; and Docket Number 11000-application of Houston Lighting and Power Company to amend CCN for the Dupont Project Generating Unit.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 23, 1992, 3:02 p.m.

TRD-9205655

Texas Racing Commission

Monday, May 4, 1992, 10 a.m. The Texas Racing Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will call the meeting to order; take roll call; discuss approval of minutes of

April 3, 1992; vote to adopt the following rules: §§303.6, 305.44, 309.53, 321.201-321.208, 321.231-321.235, 321.271-321.277; vote to propose the following rules: §§309.54, 309.64, 319.365, 311.153, 309.198, 319.3, 319.5, 319.111, and 319.202; request by TQHA for rule regarding stakes and prepayment races; discuss enforcement, regulatory, and budgetary projections and requirements for 1994-1995 fiscal biennium and strategic plan development; discuss and possibly act on resolution regarding accrediting stewards and racing judges; discuss reciprocal licensing; consider and act on request by TVMDL for change in per sample drug testing charge for horses; staff report on currently operating racetracks; status reports from Class 1 licensees; consider and vote on request by Bandera Downs for approval of proposed ownership change; order proposed by staff regarding Manor Downs simulcasting and live racing on Memorial Day weekend; request by Manor Downs to cancel Friday racing in Spring 1992; request by Trinity Meadows for additional 1992 live race dates; request by Trinity Meadows for 1992 and 1993 simulcast race dates; proposals for decisions in Number 91-02-38 and 91-02-44; discuss old and new business; and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 794-8461.

Filed: April 24, 1992, 3 p.m.

TRD-9205725

Railroad Commission of Texas

Monday, May 4, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room, Austin. Agendas follow.

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.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: April 24, 1992, 11:03 a.m.

TRD-9205680

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, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7187.

Filed: April 24, 1992, 11:04 a.m.

TRD-9205681

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 78711-2967, (512) 463-6710.

Filed: April 24, 1992, 11:04 a.m.

TRD-9205682

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 78711-2967, (512) 463-6828.

Filed: April 24, 1992, 11:04 a.m.

TRD-9205683

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 78711-2967, (512) 463-6755.

Filed: April 24, 1992, 11:04 a.m.

TRD-9205684

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 78711-2967, (512) 463-7251.

Filed: April 24, 1992, 11:04 a.m.

TRD-9205685

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: April 24, 1992, 11:04 a.m.

TRD-9205686

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 78711-2967, (512) 463-7257.

Filed: April 24, 1992, 11:05 a.m.

TRD-9205687

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 case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission 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 78711-2967, (512) 463-7274.

Filed: April 24, 1992, 11:05 a.m.

TRD-9205688

Monday, May 18, 1992, 1:30 p.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room 12-126, Austin. According to the agenda summary, the commission will hold a statewide hearing on oil and gas.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6729.

Filed: April 24, 1992, 11:02 a.m.

TRD-9205679

Texas Real Estate Research Center

Tuesday, May 12, 1992, 10 a.m. (Rescheduled from April 15, 1992). The Advisory Committee of the Texas Real Estate Research Center will meet at 233 Benmar Street, Conference Room, Suite 742, Houston. According to the complete agenda, the committee will hear opening remarks; discuss approval of minutes; current budget report; 1992-1993 recommended budget; set date of next meeting; discuss other business; and adjourn.

Contact: Gary Halder, Associate Director, Real Estate Center, Texas A&M University,

College Station, Texas 77843-2115, (409) 845-9691.

Filed: April 27, 1992, 9:09 a.m.

TRD-9205839

Sabine River Compact Administration

Friday, June 12, 1992, 9:30 a.m. The Sabine River Compact Administration will meet at the Maison Dupuy Hotel, New Orleans, Louisiana. According to the agenda summary, the administration will call the meeting to order; discuss approval of the minutes; hear reports: of chairman; secretary; treasurer; committees; discuss unfinished and new business; and adjourn.

Contact: Herman Settemeyer, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7741.

Filed: April 27, 1992, 11:26 a.m.

TRD-9205765

School Land Board

Tuesday, May 5, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board will discuss approval of previous board meeting minutes; pooling applications, Pearsall Austin Chalk, LaSalle County; Clam Lake, Jefferson County; 60-S, East, Jefferson County; Wildcat Field, Nueces County and Giddings, (Austin Chalk-3), Burleson County; consideration and approval of schedule and procedures for the October 6, 1992 oil, gas and other minerals lease sale; applications to lease highway rights of way for oil and gas, Tom Green County and Lipscomb County; direct land sale, Real County; coastal public lands-3 commercial lease applications, Neches River, Jefferson County; Clear Lake, Galveston County; Sabine Pass, Jefferson County; lease application, Arroyo Colorado, Cameron County; easement applications, Colorado River, Matagorda County; Clear Lake, Harris County; Laguna Madre, Cameron County; and West Galveston Bay, Galveston County; structure permit renewal, Laguna Madre, Kleberg County; structure permit amendment, Laguna Madre, Kleberg County; consideration and approval of land acquisition, Hidalgo County; meet in executive session to consider land acquisition in Hidalgo County; consideration and approval of land acquisition/trade, Bexar County; and to discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: April 27, 1992, 4:07 p.m.

TRD-9205814

Texas Senate

Friday, May 8, 1992, 10 a.m. The Senate Interim Committee on State Affairs of the Texas Senate will meet at Committee Room One, One Capitol Square, Austin. According to the agenda summary, the committee will call the meeting to order; take roll call; give status reports; and adjourn.

Contact: Joe Gagen, P.O. Box 12068, Austin, Texas 78711, (512) 463-0380.

Filed: April 23, 1992, 2:38 p.m.

TRD-9205646

Texans' War on Drugs, Inc.

Monday, April 27, 1992, 9 a.m. The Board of Directors of the Texans' War on Drugs, Inc. held an emergency meeting by teleconference call at the Texans' War on Drugs Conference Room, 11044-D Research Boulevard, Suite 200, Austin. According to the complete agenda, the board called the meeting to order; welcomed members; discussed business; met in executive session and discussed letter of employment/conditions of employment for Dan Buie; discussed other personnel matters; adjourn executive session; acted on matters discussed in executive session; acceptance of letter of employment/conditions of employment for Dan Buie; acceptance of Paul Eggers resignation from board; acceptance of Beverly Barron's resignation as interim executive director and regional coordinator effective May 15, 1992; and adjourned. The emergency status was necessary due to urgent personnel matters.

Contact: Janis Pittel, 11044-D Research Boulevard, Suite 200, Austin, Texas 78759, (512) 343-6950.

Filed: April 24, 1991, 11:46 a.m.

TRD-9205694

University of Texas System

Wednesday, May 6, 1992, 10 a.m. The Board for Lease of University Lands of the University of Texas System will meet at the Midland Hilton Hotel, Ballroom, Midland. According to the complete agenda, the board will have opening of bids; discuss approval of minutes; future lease sales; and approval of lease awards to highest bidders.

Contact: Linward Shivers, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462.

Filed: April 27, 1992, 10:32 a.m.

TRD-9205754

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**The University of Texas at
El Paso**

Wednesday, April 29, 1992, 2 p.m. The Institutional Animal Care and Use Committee of the The University of Texas at El Paso met at the Psychology Conference Room 310, Psychology Building, Austin. According to the complete agenda, the Chairman, James V. Devine, called the meeting to order; discussed approval of minutes of December 3, 1991 meeting; discussed renewal of Animal Welfare Assurance; and discussed other business initiated by committee members.

Contact: Dr. James V. Devine, Department of Psychology, The University of Texas at El Paso, El Paso, Texas 79968, (915) 747-5551.

Filed: April 24, 1992, 11:45 a.m.

TRD-9205692

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**Texas On-site Wastewater
Treatment Research Council**

Thursday, May 7, 1992, 1 p.m. The Texas On-site Wastewater Treatment Research Council of the Texas Water Commission will meet at the Center for Environmental Research, FM 973, Austin. According to the agenda summary, the council will consider and take action on: meeting will be called to order; discuss approval of the minutes of the February meeting; hear report of the executive secretary; chairman's remarks; the inter-agency contract between the council and the Texas Water Commission; Texas Water Commission update; council symposia and master plan update; council newsletter update; report on council OSSF Literature Research; report by council technical review; presentation of RFP's for specialized projects; and discuss new and unfinished business.

Contact: Theodore Johns, P.O. Box 133087, Austin, Texas 78711-3087, (512) 834-6663.

Filed: April 27, 1992, 8:57 a.m.

TRD-9205727

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Texas Water Commission

Wednesday, May 6, 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: April 24, 1992, 3 p.m.

TRD-9205717

Wednesday, May 6, 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, including specifically the adoption of new or amended agency regulations. 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, rescheduling an item in its 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: April 24, 1992, 3 p.m.

TRD-9205716

Thursday-Friday, May 7-8, 1992, 8:30 a.m. The Municipal Solid Waste Management and Resource Recovery Advisory Council of the Texas Water Commission will meet at the Crest Hotel on Town Lake, Brazos Room, First and Congress, Austin. According to the agenda summary, the council will call the meeting to order; hear reports of the municipal solid waste division director, conference planning committee, education committee; and discuss new business.

Contact: Gary Trim, P.O. Box 13087, Austin, Texas 78711, (512) 834-6625.

Filed: April 27, 1992, 8:56 a.m.

TRD-9205726

Wednesday, May 20, 1992, 9 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 118, Austin. According to the agenda summary, the commission will consider whether to affirm, modify or set aside Emergency Order Number 92-7E granted April 22, 1992 to Mobil Oil Corporation doing business as Mobil Mining and Minerals Company. The Order authorizes Mobil Oil to discharge partially treated wastewater effluent into an unnamed ditch;

thence to the Houston Ship Channel in Segment Number 1007 of the San Jacinto River Basin.

Contact: John Carlton, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 27, 1992, 2:29 p.m.

TRD-9205784

Tuesday, May 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 119, Austin. According to the agenda summary, the commission will hold a hearing on the City of Highland Village's application to amend its certificate of convenience and necessity (CCN) Number 12053 to allow it to expand the area to which it provides water utility service in Denton County. The applicant also proposes decertification of a portion of Bartonville Water Supply Corporation's service area authorized under Bartonville's CCN Number 10197. Docket Number 9454-C.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 28, 1992, 9:07 a.m.

TRD-9205833

Tuesday, May 26, 1992, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 512, Austin. According to the agenda summary, the commission will hold a hearing on Texas Municipal Utility Services, Inc. doing business as Somersetshire Estates Sewage Treatment Plant's application to discontinue sewer utility service and cancel its certificate of convenience and necessity (CCN) Number 20712 for its service area located approximately 20 miles northwest of Alvin, and 1 3/4 miles west of Pearland.

Contact: Leslie A. Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 28, 1992, 9:08 a.m.

TRD-9205836

Monday, June 1, 1992, 10 a.m. The Office of Hearings Examiners of 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 hold a hearing on Hemp Hill Contracting Company doing business as Mitchell County Utility Company's water rate increase effective March 16, 1992 for its service area in Mitchell County. Docket Number 9417-R.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 28, 1992, 9:05 a.m.

TRD-9205829

Wednesday, June 10, 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 hold a hearing on Horne and Owen's Application Number 5405 for a permit to divert and use up to eight acre-feet of water per annum from Running Water Draw, tributary of White River, tributary of the Salt Fork Brazos River, tributary of the Brazos River, Brazos River Basin, approximately six miles southeast of Plainview, Hale County.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: April 28, 1992, 9:08 a.m.

TRD-9205834

Wednesday, June 24, 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 hold a hearing on Application Number 5400 submitted by South Shore Harbor Development, Limited for a permit to divert and use 613.8 acre-feet of water per annum from an unnamed tributary of Clear Creek, tributary of Clear Creek, tributary of Galveston Bay, San Jacinto-Brazos Coastal Basin, in Galveston County, approximately 35 miles northeast of Angleton.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: April 28, 1992, 9:05 a.m.

TRD-9205830

Wednesday, June 24, 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 hold a hearing on the Woodlands Corporation's Application Number 5408 for a water use permit to impound water in a reservoir created by a dam on an unnamed tributary of Decker Branch, tributary of Mill Creek, tributary of Spring Creek, tributary of the West Fork San Jacinto River, tributary of the San Jacinto River, San Jacinto River Basin. The reservoir, with a surface area of 15.4 acres and a capacity of 92 acre-feet, will be used for in-place recreational use approximately 15 miles southwest of Conroe, Montgomery County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389.

Filed: April 28, 1992, 9:05 a.m.

TRD-9205831

Wednesday, June 24, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. Ac-

ording to the agenda summary, the commission will hold a hearing on the City of Rusk's application for an extension of time to commence and complete modifications of Rusk Ore Mine Dam and Reservoir on Mall Creek, tributary of Bean's Creek, tributary of Box Creek, tributary of the Neches River, Neches River Basin, and impound therein not to exceed 345 acre-feet of water. Certificate of Adjudication Number 06-3302, issued February 7, 1985, authorizes the reservoir and dam, located approximately 2.5 miles northwest of Rusk, Cherokee County, be used for recreational purposes.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: April 28, 1992, 9:06 a.m.

TRD-9205832

Wednesday, July 8, 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 hold a hearing on Norman J. Neelley's Application Number 5411 for a permit to divert and use 20 acre-feet of water per year from North Bosque River, tributary of Brazos River, Brazos River Basin, approximately 5 miles north of Clifton, Bosque County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 371-6384.

Filed: April 28, 1992, 9:08 a.m.

TRD-9205835

Thursday, June 4, 1992, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Henderson City Hall, Council Chambers, 400 West Main Street, Henderson. According to the agenda summary, the commission will consider an application by the City of Henderson for renewal of Permit Number 10187-01 authorizing a discharge of treated domestic wastewater effluent into Bromley Creek adjacent to the plant site; thence to Shawnee Creek; thence to the Angelina River in Segment Number 0611 of the Neches River Basin.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 27, 1992, 2:28 p.m.

TRD-9205782

Thursday, June 11, 1992, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Edwards County Courthouse, District Courtroom, On the Square, Rocksprings. According to the agenda summary, the commission will consider an application by Lloyd Mitchell for Proposed Permit Number 03418 to authorize the disposal of wastes and wastewater from a sheep/goat feedlot. The feedlot is on the east side of State Highway 55, one half mile south of the

intersection of State Highway 55 and US Highway 377 in Edwards County.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 27, 1992, 2:29 p.m.

TRD-9205783

Thursday, June 11, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Hood County Courthouse, County Courtroom, On the Square, Granbury. According to the agenda summary, the commission will consider an application by the City of Lipan for a permit (Proposed Permit Number 13590-0) authorizing a discharge of treated domestic wastewater effluent into an unnamed tributary of Kickapoo Creek; thence to Kickapoo Creek; thence to Brazos River in Segment Number 1206 of the Brazos River Basin.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 27, 1992, 2:28 p.m.

TRD-9205780

Thursday, June 11, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Hood County Courthouse, County Courtroom, On the Square, Granbury. According to the agenda summary, the commission will consider an application by the City of Granbury for amendment to Permit Number 10178-02 authorizing an increase in the discharge of treated domestic wastewater effluent via a pipeline into Lake Granbury in Segment Number 1205 of the Brazos River Basin.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 27, 1992, 2:28 p.m.

TRD-9205781

Texas Workers' Compensation Insurance Fund

Monday, April 27, 1992, 8:30 a.m. The Board of Directors of the Texas Workers' Compensation Insurance Fund held an emergency meeting at the Crest Hotel, Rio Grande Room, 111 East First Street, Austin. According to the agenda summary, the board called the meeting to order; took roll call; met in executive session to discuss proposed rate filings; took action on proposed rate filings; and adjourned. The emergency status was necessary to formulate rates to meet April 30, 1992 deadline set by the State Board of Insurance.

Contact: Alana Foster, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3800.

Filed: April 23, 1992, 2:48 p.m.

TRD-9205654

Regional Meetings

Meetings Filed April 23, 1992

The Alamo Area Council of Governments Rural Area Judges met at 118 Broadway Street, Suite 420, San Antonio, April 28, 1992, at 10:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9205660.

The Alamo Area Council of Governments Planning and Program Development met at 118 Broadway Street, Suite 420, San Antonio, April 28, 1992, at 11:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9205661.

The Alamo Area Council of Governments Board of Directors met at 118 Broadway Street, Suite 420, San Antonio, April 28, 1992, at 1 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9205662.

The East Texas Council of Governments East Texas Private Industry Council met at ETCOG Office 3800 Stone Road, Kilgore, April 30, 1992, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9205641.

Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, May 6, 1992, at 2 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 299-2400. TRD-9205653.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, April 27, 1992, at 7:30 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9205647.

Meetings Filed April 24, 1992

The Austin-Travis County Mental Health and Mental Retardation Center Operations and Planning Committee met at 1430 Collier Street, Austin, April 28, 1992, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9205678.

The Austin-Travis County Mental Health and Mental Retardation Center Executive

Committee met at 1430 Collier Street, Austin, April 30, 1992, at 7 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78706-3548, (512) 447-4141. TRD-9205719.

The Brazos River Authority Board of Directors met at the Lodge of Granbury, 400 East Pearl Street, Granbury, April 27, 1992, at 1 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9205695.

The Carson County Appraisal District Board of Directors met at 102 Main Street, Panhandle, April 30, 1992, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9205691.

The Dallas Area Rapid Transit Customer and Community Relations Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, April 1, 1992, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205721.

The Dallas Area Rapid Transit CBD Transit Master Plan Subcommittee Workshop met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, April 28, 1992, at 9 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205730.

The Dallas Area Rapid Transit Minority Affairs Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, April 28, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205724.

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, April 28, 1992, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205722.

The Dallas Area Rapid Transit Board of Directors met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, April 28, 1992, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205720.

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, April 30, 1992, at 9 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205729.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Dallas, May 8, 1992, at 8 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9205673.

The Tarrant Appraisal District Board of Directors met at 2301 Gravel Road, Fort Worth, April 30, 1992, at 9 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9205674.

The Texas Municipal Power Agency ("TMPA") Audit and Budget Committee met at the Sheraton Park Central, Alexander Room, Second Floor, Dallas, April 30, 1992, at 12:30 p.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77802, (409) 873-2013. TRD-9205693.

Meetings Filed April 27, 1992

The Angellina and Neches River Authority Pineywoods Solid Waste Agency Board of Directors will meet at the Ramada Inn, 249 East Gibson, Room to the Right of the Front Door, Jasper, May 1, 1992, at 10:30 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795, FAX (409) 632-2564. TRD-9205826.

The Archer County Appraisal District Agricultural Advisory Committee met at the Appraisal District Office, 211 South Center, Archer City, April 30, 1992, at 11 a.m. Information may be obtained from Edward Trigg, 211 South Center, Archer City, Texas 76351, (817) 574-2172. TRD-9205762.

The Bastrop Central Appraisal District Appraisal Review Board met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, April 30, 1992, at 7 p.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9205802.

The Bexar-Medina-Atascosa Counties Water Control District Number One Board of Directors will meet at the District Office, Highway 81, Natalia, May 4, 1992, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9205767.

The Brazos Valley Quality Work Force Planning Committee held an emergency meeting at the Blinn Occupational Center, 301 Post Office Street, Bryan, April 28, 1992, at 11:30 a.m. The emergency status was necessary due to need of voting on new members and the power activity needed to be in by April 28, 1992. Information may

be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801, (409) 823-4988. TRD-9205746.

The County Education District Number 14 will meet at the Pampa Middle School Library, 2401 Charles Street, Pampa, May 4, 1992, at 7 p.m. Information may be obtained from Dawson Orr, 321 West Albert, Pampa, Texas 79065, (806) 669-4700. TRD-9205752.

The Dallas Area Rapid Transit Search Committee held an emergency meeting at the DART Office, 601 Pacific Avenue, Board Office, Dallas, April 28, 1992, at 1:30 p.m. The emergency status was necessary as it was of the utmost importance that the DART Board of Directors take immediate action in implementing the DART Service Plan. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205801.

The Dallas Area Rapid Transit Customer and Community Relations Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, April 28, 1992, at 2:30 p.m. The emergency status was necessary as it was of the utmost importance that the DART Board of Directors take immediate action in implementing the DART Service Plan. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9205751.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, May 5, 1992, at 3:30 p.m. Information may be obtained from Sandy Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9205786.

The Education Service Center, Region XIII Board of Directors met at the ESC, Region XIII, Room 205, 5701 Springdale Road, Austin, April 30, 1992, at 12:30 p.m. Information may be obtained from Dr. Joe Parks, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9205776.

The Golden Crescent Regional Planning Commission Board of Directors held an emergency meeting at the Immaculate Conception Catholic Church Parish Hall, 107 North Commercial, Goliad, April 30, 1992, at 8:30 p.m. The emergency status was necessary as the Criminal Justice Division Plan and several TRACS review are due before May 1, 1992. Information may be obtained from Patrick Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9205774.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, May 8, 1992, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9205770.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, April 30, 1992, at 7 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9205769.

The Lower Neches Valley Authority Board of Directors met at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, April 30, 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-9205768.

The Middle Rio Grande Development Council (Emergency revised agenda). Texas Review and Comment System met at the Zavala County Courthouse, 200 East Uvalde, Crystal City, April 29, 1992, at 1 p.m. The emergency status was necessary due to the need to review applications before the end of April in order for them to meet their deadlines. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9205803.

The Millersview-Doole Water Supply Corporation Board of Directors will meet

at the Corporation's Business Office, One Block West of FM 765 and FM 2134, Millersview, May 4, 1992, at 8 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9205766.

The North Plains Groundwater Conservation District Board of Directors will meet at the District Office, 603 East First Street, Dumas, May 4, 1992, at 10 a.m. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401. TRD-9205800.

The Shackelford Water Supply Corporation Director's will meet at the Ft. Griffin Restaurant, Albany, May 6, 1992, at noon. Information may be obtained from E. D. Fincher, P.O. Box 1295, Albany, Texas 76430, (915) 762-2319. TRD-9205777.

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Meetings Filed April 28, 1992

The Bexar-Medina-Atascosa Counties Water Control District Number One Board of Directors will meet at the District Office, Highway 81, Natalia, May 4, 1992, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9205840.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, May 1, 1992, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9205828.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, May 7, 1992, at 9 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9205838.

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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 Commission on Alcohol and Drug Abuse

Notice of Request for Proposals

The Texas Commission on Alcohol and Drug Abuse, under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, gives notice of a Texas Prevention Partnership Request for Proposals (RFP). The RFP is soliciting applications for the procurement of services to be provided under the Texas Prevention Partnership (TPP) initiative established by the commission to conduct issues-oriented public awareness campaigns statewide through the creation of community-level partnerships. The focus of the initiative for Fiscal Year 1993, September 1, 1992-August 31, 1993, will be the revision and dissemination of TPP materials; the development, promotion, and distribution of inhalant use/abuse prevention materials; and the second year activities of the "Baby's First Gift" campaign.

To request a copy of the RFP, call the Funding Processes Section at (512) 867-8752, or write to: Texas Commission on Alcohol and Drug Abuse, Funding Processes Section, 720 Brazos Street, Suite 403, Austin, Texas 78701.

The closing date for receipt of applications by the commission is 5 p.m. on July 3, 1992. The contract with the funded provider will be executed for the period of September 1, 1992-August 31, 1993.

One contract will be issued at the amount negotiated between TCADA and contractor, not to exceed \$400,000.

Eligible providers are private nonprofit and public organizations. The RFP contains additional provider eligibility requirements.

Technical assistance will be offered by the Funding and Program Management Division of the commission. Any questions regarding application completion or submission should be directed to Beth Quade, Research Specialist, at (512) 867-8185.

Issued in Austin, Texas, on April 24, 1992.

TRD-9205718 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: April 24, 1992

For further information, please call: (512) 867-8700



Texas Bond Review Board

Bi-Weekly Report on the 1992 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of April 4, 1992-April 17, 1992.

Total amount of state ceiling remaining unreserved for the \$242,886,000 subceiling for qualified mortgage bonds under the Act as of April 17, 1992: \$ 0, 397,950.

Total amount of state ceiling remaining unreserved for the \$151,803,750 subceiling for state-voted issues under the Act as of April 17, 1992: \$51,803, 750.

Total amount of state ceiling remaining unreserved for the \$65,058,750 subceiling for qualified small issues under the Act as of April 17, 1992: \$35, 658,750.

Total amount of state ceiling remaining unreserved for the \$43,372,500 subceiling for residential rental project issues under the Act as of April 17, 1992: \$26,372,500.

Total amount of state ceiling remaining unreserved for the \$364,329,000 subceiling for all other bonds requiring an allocation under the Act as of April 17, 1992: \$8,194,000.

Total amount of the \$867,450,000 state ceiling remaining unreserved as of April 17, 1992: \$222,426,950.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from April 4, 1992-April 17, 1992: none.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a certificate of allocation pursuant to the Act from April 4, 1992-April 17, 1992: none.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from April 4, 1992-April 17, 1992: San Antonio HFC, The Prime Group, residential rental Walnut Hills Apartments, \$12 million; San Antonio HFC, The Prime Group, residential rental River Oaks Apartments, \$7 million; San Antonio HFC, The Prime Group, residential rental Eagle's Nest Apartments, \$500,000.

Following is a comprehensive listing of applications which released a portion or their reserved amount pursuant to the Act from April 4, 1992-April 17, 1992: Midlothian IDC, Safe Tire Disposal Company, released-\$300,000.

Issued in Austin, Texas, on April 22, 1992.

TRD-9205589 Tom K. Pollard
Executive Director
Texas Bond Review Board

Filed: April 22, 1992

For further information, please call: (512) 463-1741



**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 formu-

las and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, as amended (Texas Civil Statutes, Articles 5069-1. 04, 1.05).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/27/92-05/03/92	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	05/01/92-05/31/92	10.00%	10.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on April 20, 1992.

TRD-9205597 Al Endsley
Consumer Credit Commissioner

Filed: April 22, 1992

For further information, please call: (512) 479-1280

Texas Education Agency

**Notice of Public Hearings-State Board of
Education Task Force on Professional
Preparation and Development**

The State Board of Education Task Force on Professional Preparation and Development will hold a series of public hearings across the state to obtain public input on the development of the board's policy on Professional Development for educators.

Those wishing to testify at the public hearings may register at the hearing or by calling the Division of Professional Development, Texas Education Agency, (512) 463-9328 no later than two days prior to the date of the hearing. Presenters will be assigned times consecutively as they call unless a later time is requested. Thirty copies of a written abstract of testimony to be presented is requested at the time of the hearing.

The Task Force on Professional Preparation and Development will hold public hearings as follows: Monday, May 4, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region X, 400 East Spring Valley Road, Richardson; Tuesday, May 5, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region VII, 818 East Main Street, Kilgore; Wednesday, May 6, 1992; 3:30 p.m. until 7 p.m., Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin; Monday, May 11, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region XX, 1314 Hines Avenue, San Antonio; Monday, May 11, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region II, 209 North Water Street, Corpus Christi; Tuesday, May 12, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region IV, 7145 West Tidwell, Houston; Wednesday, May 13, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region XVII, 1111 West Loop 289, Lubbock; Wednesday, May 13, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region XIX, 6611 Boeing

Drive, El Paso; Thursday, May 14, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region XVI, 1601 South Cleveland, Amarillo; Thursday, May 14, 1992; 3:30 p.m. until 7 p.m., Beaumont ISD Board Room, 3395 Harrison Avenue, Beaumont; Friday, May 15, 1992; 3:30 p.m. until 7 p.m., Education Service Center Region I, 1900 West Schunior, Edinburg.

Additional information concerning these public hearings may be obtained from the Division of Professional Development, Texas Education Agency, 1701 North Congress Avenue, Austin, at (512) 463-9328.

Issued in Austin, Texas, on April 22, 1992.

TRD-9205731 Lionel R. Meno
Commissioner of Education

Filed: April 24, 1992

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

Texas Department of Health

**Extension of Comment Period
Concerning Proposed Rules**

The April 3, 1992, issue of the *Texas Register* beginning on page 2371, contained proposed Texas Department of Health (department) rules as follows: 25 TAC Chapter 277 concerning occupational safety; 25 TAC Chapter 289 concerning occupational health and radiation control; and 25 TAC Chapter 295 concerning occupational health. The comment period for each set of rules is 30 days following publication in the *Texas Register*. The department is extending the comment period for an additional 30 days.

Issued in Austin, Texas, on April 27, 1992.

TRD-9205745 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: April 27, 1992

For further information, please call: (512) 834-6600

Texas High-Speed Rail Authority

Notice of Contract Award

Contractor. The Texas High-Speed Rail Authority (Authority) announces that the firm of Woodward-Clyde Con-

sultants has been awarded a contract to assist the Authority in preparing an environmental impact statement. The business address of Woodward-Clyde Consultants is 13601 Preston Road, Suite 600E, Dallas, Texas 75240.

Publication Date. The consultant proposal request was published in the November 19, 1991, issue of the *Texas Register* (16 TexReg 6705).

Description of Services. The consultant will assist the Authority in preparing an environmental impact statement (EIS). The EIS will evaluate the proposed project, the no-action alternative, and other reasonable alternatives identified in the scoping process. The EIS will examine a private sector proposals to build, operate, and maintain a high-speed rail service railroad between the cities of Austin, San Antonio, Dallas, Fort Worth, and Houston.

Contract Amount. The total value of the contract exceeds \$10,000 and is dependent on the scope of services.

Contract Period. The contract is in effect beginning April 15, 1992, and terminates upon final completion of the scope of services in the contract.

Due Date of the Report. The date of delivery of the final environmental impact statement will depend on the scope of services.

Issued in Austin, Texas, on April 23, 1992.

TRD-9205657 Allan Rutter
Deputy Executive Director
Texas High-Speed Rail Authority

Filed: April 23, 1992

For further information, please call: (512) 478-5484

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Texas Department of Housing and Community Affairs

Related to the Proposed 1992 Final Statement

On March 30, 1992, the Texas Department of Housing and Community Affairs (TDHCA) submitted the Final Statement of its community development objectives and projected use of Community Development Block Grant (CDBG) non-entitlement area funds for Federal Fiscal Year 1992 to the United States Department of Housing and Urban Development (HUD). TDHCA submitted a summary of the Texas Community Development Program to each eligible applicant in the state of Texas along with a schedule of five public hearings, which were announced in the February 25, 1992, issue of the *Texas Register* (17 TexReg 1557). The five public hearings were held at different locations across the state in March 1992 to solicit comments on the proposed Final Statement.

TDHCA received 17 letters containing 95 specific comments or recommendations from cities and counties, organizations, consultants, and other concerned citizens. Each of the letters received included recommendations that TDHCA make one or more changes to the 1992 proposed Final Statement. Based on the number and frequency of comments received for the different areas of the program outlined in the Final Statement, TDHCA made changes as noted in the following information and submitted the Final Statement to HUD for approval.

In accordance with Texas Civil Statutes, Article 6252-13e, §4, the categories of comments received are summarized as follows.

Allocation System. The proposed Final Statement included five separate funding categories including the Community Development Fund, Texas Capital Fund, Colonia Fund, Planning/Capacity Building Fund, and the Disaster Relief/Urgent Need Fund. One council of governments and two consultants expressed support for the Community Development Fund and each called for an increase in the amount of funds allocated to this fund. One consultant recommended that the Texas Capital Fund be eliminated. A TDHCA board member expressed support for more housing programs through the CDBG program based on a comprehensive review and analysis of housing needs in the nonentitlement communities. Based on the number and frequency of comments received, the allocation system in the Final Statement was not changed.

Definition of Funds. One section of the proposed Final Statement provided a short description of the funding categories available.

Five consultants expressed support for the Disaster Relief/Urgent Need Fund and encouraged TDHCA to consider only water and sewer projects. One consultant suggested that the time threshold for Disaster Relief/Urgent Need Fund projects be reduced from 18 months to nine months. This consultant further stated that DR/UN Fund monies should be focused on disaster relief rather than urgent need projects. One council of governments stated that street and bridge repair should continue to be allowed under the disaster relief portion of the fund.

Based on the number and frequency of comments received, the definition of funds in the Final Statement was not changed; however, there will be more stringent requirements for Disaster Relief/Urgent Need Fund projects in the application guide.

Distribution of Funds. The proposed Final Statement stated what percentage of the overall amount of funds available will be allocated to each of the five funding categories. One council of governments and three consultants suggested that the allocation for the Community Development Fund be increased and that the allocation for the Texas Capital Fund be decreased; one consultant recommended that the Community Development Fund be increased from 65% as proposed, to 75%. One consultant recommended that the regional allocations for the Community Development Fund be based on 1990 Census data (if available) rather than 1980 data.

One consultant recommended that the Texas Capital Fund be eliminated and the funds be allocated to the Community Development Fund.

One consultant suggested that unused Colonia Fund monies be made available to the counties currently not eligible for the Colonia Fund. One consultant suggested that the Colonia Fund and the Texas Capital Fund be reduced to the level of actual distribution based on past performance. One council of governments suggested that unused Texas Capital Fund monies be allocated to the next year's Community Development Fund.

One consultant recommended that no further setasides (other than the ones proposed) be established. Conversely, recommendations were made that supported funds to be setaside for coordination with the HOME and HOPE Program.

One consultant recommended that the allocation for the Disaster Relief/Urgent Need Fund be increased from 4.10% to 7.5%. One consultant recommended that TDHCA not hold approved but unfunded Disaster Re-

lief/Urgent Need Fund applications for funding in the next program year. One consultant recommended that TDHCA fund urgent need projects with reallocated/recaptured funds from previous years rather than adding these funds back into the 1992 allocation.

One consultant suggested that regions benefitting from the Colonia Fund be required to expend their respective annual Community Development Fund allocation for assistance to colonias until all of their needs are met. Two consultants recommended that the Colonia Fund be reduced from ten percent to 5.0% due to the lack of participation by eligible applicants.

Based on the number and frequency of comments received, the distribution of funds in the Final Statement was not changed.

Contract Awards. The proposed Final Statement included a maximum and minimum grant amount for each of the five individual funding categories.

The Community Development Fund maximum amount (for consideration by the individual Regional Review Committees) was set at \$500,000. One consultant recommended that the maximum grant amount to be considered be dropped to \$300,000 in order to increase the number of communities assisted. One consultant suggested that the maximum individual grant amount for the Disaster Relief/Urgent Need Fund be reduced from \$350,000, as proposed, to \$250,000. One consultant recommended that the maximum individual grant amount for the Texas Capital Fund Infrastructure Program be reduced from the proposed \$800,000 to \$500,000.

Based on the number and frequency of written and oral comments received, the Final Statement was changed to increase the maximum grant amount for Colonia Fund planning contracts from \$40,000 to \$100,000 to allow for platting in the colonias.

Citizen Participation. The proposed Final Statement included a section on citizen participation requirements to be followed by the program's applicants. One of the requirements set forth in the proposed Final Statement is that a public notice be published in a non-legal section of a local newspaper. Two consultants suggested that the applicants be allowed to publish in the legal section of the newspaper. In addition, these two consultants and one council of governments recommended that applicants be allowed to conduct public hearings at any time during the day; the proposed Final Statement requires that public hearings be held after 5 p.m. during the week or on a Saturday.

Two consultants stated that TDHCA should be required to hold public hearings for any major changes being considered, such as reallocating funds or changing regulations.

Based on the number and frequency of comments received, the Final Statement was changed to allow public hearing notices to be published in the legal section of the newspaper and to require that notices be distributed to interested community groups. In addition, the requirement to have both hearings after 5 p.m. on weekdays or on Saturday has been changed so that only one hearing is required to be after 5 p.m. on weekdays or on Saturday. Furthermore, only communities over 5,000 in population are now required to hold public hearings in the project target area.

Regional Review Committees (RRC) - Composition and Role. A number of suggestions/recommendations were received regarding the composition and role of the Re-

gional Review Committees in each of the 24 state planning regions across the state. Three consultants and one city suggested that the Governor appoint at least one RRC member from each county represented in the region to the extent possible. One consultant further recommended that the RRC not be set at twelve members; rather, the RRCs would have as many members as there are counties in the region (or equal multiples thereof for regions with fewer counties).

One consultant suggested that the Governor be encouraged to make RRC appointments early enough to allow a period for training.

Although not included in the Final Statement, two consultants and one city recommended that RRC members not be allowed to participate in the presentation or vote on any application from within their respective county. The two consultants further encouraged TDHCA to take a stronger stand on potential conflicts of interest in RRC scoring of application. One consultant suggested that each applicant's average score at the RRC scoring meeting be based on the same number of votes. One consultant offered a variety of suggested parliamentary procedures for the Regional Review Committees.

Based on the number and frequency of comments received, the Final Statement was not changed; however, the Regional Review Committee Guidebook will be changed to address the comments received.

Performance Requirements. The proposed Final Statement included several requirements that must be met before an application can be submitted for consideration under the various funding categories. One consultant suggested that these performance requirements be relaxed for housing assistance projects due to the administrative difficulties associated with this type of program. Based on the number and frequency of comments received, the Final Statement was not changed.

Selection Criteria - Community Development Fund. The scoring criteria used to determine which applicants are selected for funding were included in the proposed Final Statement. Two consultants encouraged TDHCA to either use 1990 Census data (if available) or to reduce the number of points awarded for community distress factors.

Two consultants expressed support for the low and moderate income benefit score as proposed.

One consultant proposed that waivers to the minority hiring score only be granted to applicants with three or fewer employees; the proposed Final Statement sets this limit at five.

Three consultants expressed support for the project impact scoring criteria. Two of these consultants recommended that there should be defined limits within the category, which should be made available to applicants in the application guide. The other consultant recommended that the three persons who currently review the applications for project impact scoring share information about the applications and allow consensus scoring. Two consultants stated that additional information about the HOME and HOPE programs must be made available to the public before additional points for project impact can be considered for projects that are coordinated with these two programs. One consultant opposed giving additional points for projects addressing concerns brought about by the Young vs. Kemp litigation because this seems to reward past discrimination. Three consultants supported the concept of awarding up to 10 additional points through the project impact

score for applicants who were not funded during the previous year. One city opposed the project impact score. This city further stated that state-mandated improvements should receive equal consideration for project impact points as first-time service projects. Based on the number and frequency of comments received, the Final Statement was not changed; however, the project impact scoring criteria will be further explained in the Application Guide, and information on the HOME and Low Income Housing Tax Credit (LIHTC) Programs will be distributed to all eligible applicants and interested parties.

Selection Criteria - Planning/Capacity Building Fund. The proposed Final Statement included the criteria that will be used to select recipients of Planning/Capacity Building Fund grants. One consultant suggested that selection of recipients through this fund should not be influenced by the Young vs. litigation under the planning strategy and products scoring category. Based on the number and frequency of comments received, the Final Statement was not changed.

Miscellaneous Comments - TDHCA received comments that were not related to the proposed 1992 Final Statement; however, these comments are included here to ensure that all comments are considered.

One consultant recommended that the state (TDHCA and the Texas Department of Commerce) share liability for job creation/retention with local governments for projects funded through the Texas Capital Fund.

One county expressed support for the Colonia Fund second competition for Program Year 1991 funds. This county, however, recommended that planning activities be considered as an eligible activity through this competition.

One city and one council of governments expressed support for the "gentlemen's agreement" currently being used in three of the 24 regions whereby applicants in a particular region equally share the funds available. One consultant expressed opposition to this type of arrangement.

Two consultants recommended that a pre-application meeting be held with potential Disaster Relief/Urgent Need Fund applicants to ensure that all requirements are met in a timely and efficient manner.

One council of governments recommended that TDHCA implement a policy that requires a timely processing of drawdown requests.

One consultant suggested that survey response rates should be relaxed, and one consultant recommended that alternative methods of documenting beneficiaries for Disaster Relief/Urgent Need Fund projects should be allowed, such as using utility customer billing lists.

One consultant recommended that the program be structured so that applications are due and contracts are awarded at the same time each year.

A complete copy of the 1992 Final Statement and a summary of comments are available upon request. Please contact: Vicki Gossett, Community Development Block Grant Division, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711, (512) 320-9585.

Issued in Austin, Texas, on April 24, 1992.

TRD-9205723 Anne Paddock
Assistant General Counsel
Texas Department of Housing and
Community Affairs

Filed: April 27, 1992

For further information, please call: (512) 320-9571

◆ ◆ ◆
Public Notice

The Texas Department of Housing and Community Affairs (TDHCA) is pleased to announce that it will make approximately \$1 million available as loans at 0% interest to low-income homeowners for home improvements.

Loans will range between \$1,500 and \$15,000. Minimum loan term will be six months. Maximum loan terms are as follows: loans between \$1,500 and \$5,000 -10 years; \$5,000 and \$10,000-15 years; loans over \$10,000-20 years.

Eligible borrowers must meet the following requirements: current owner and occupant of the residence; income not more than 80% of the area median income with allowance for family size; sufficient income to repay home improvement loans; borrower must be a fee owner of the residence that will improved with the proceeds of the loan.

Eligible improvements will include the following: permanent improvements to enhance liability of property; improvement of a luxury are generally ineligible.

All interest persons are encouraged to participate in this program. Questions or requests for additional information may be directed to Virginia Brown, Deputy for Housing Finance and Development or Judith Rhedin, Director, Housing Trust Fund TDHCA, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974 or 1-800-792-1119.

Issued in Austin, Texas, on April 22, 1992.

TRD-9205664 Mario Aguilar
Attorney
Texas Department of Housing and
Community Affairs

Filed: April 23, 1992

For further information, please call: (512) 474-2974

◆ ◆ ◆
**Texas Department of Human Services
Consultant Proposal Request**

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services invites offers for consulting.

Description of Services: The objective of this request for proposal (RFP) is to obtain consulting services to develop recommendations for restructuring the current Texas Medicaid reimbursement methodologies for the nursing facility (NF) and intermediate care facility for the mentally retarded (ICF-MR) programs. In both the NF and ICF-MR programs TDHS wishes to consider recommendations for modifying the current reimbursement methodologies to incorporate variation in rates based on such factors as different staff wage and salary levels, payroll tax and employee benefit costs, and fixed capital-related costs. Such changes must be linked to costs which must be incurred by economically and efficiently operated facilities, and to indicators of quality care. A formal findings process must be developed to demonstrate that these criteria are met, in compliance with the federal Boren Amendment.

In the ICF-MR program, TDHS also wishes to consider alternatives to the current level of care methodology which

would provide for variation in care payments based on client characteristics and associated staffing and other service requirements. Due to the specialized nature of the ICF-MR program with regard to care and classification, the department will consider separate proposals and a separate contract to deal exclusively with the development of an alternative to the level-of-care classification system currently in use.

Contact Person: To obtain a copy of the request for proposal packet, contact Steve Lorenzen, Director, Provider Reimbursement Department, Texas Department of Human Services, P.O. Box 149030, Mail Code E-601, Austin, Texas 78714-9030, (512)450-4951.

Closing Date: The closing date for receiving offers is May 15, 1992.

Evaluation and Selection: Evaluation criteria will include the following: offeror's knowledge of alternative NF and ICF-MR reimbursement methodologies employed by other states, including NF case mix systems, alternative ICF-MR client classification systems, and fixed capital; offeror's knowledge of federal standards and legal requirements pertaining to long term care, including the Boren Amendment; offeror's knowledge and experience in developing Medicaid NF and ICF-MR reimbursement methodologies in other states; offeror's knowledge of quality assessment alternatives and issues and ability to develop quality indicators linked to payments; offeror's knowledge and experience in combining large computerized data bases and analyzing the results utilizing multivariate statistical methods; reasonableness of proposed cost of service in relation to the work described; demonstrated understanding of the products requested and the impacts those products have on the agency and other interested parties, including understanding of the political, cultural, and legal environment surrounding the agency's need to complete the specified tasks; and reasonableness of comprehensive and detailed proposal to accomplish each of the required tasks within the stated time frame.

Issued in Austin, Texas, on April 27, 1992.

TRD-9205737 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: April 27, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆ Proposal for Commercial Warehousing for Commodities

The Special Nutrition Programs of the Texas Department of Human Services (TDHS) is responsible for the distribution of United States Department of Agriculture (USDA) commodities to eligible recipient agencies. Commercial warehousing is used to store the commodities between shipment from USDA and issuance to recipient agencies. This notice is to announce TDHS's request for proposals for commercial warehousing for commodities.

Description of Services Required: Services required are freezer, cooler, and dry storage space to handle such products as butter, frozen meats, cheese, grain products, and canned fruits and vegetables. The volume of product will depend on the area served.

Minimal Requirements: To contract with TDHS, the following are some general conditions that the contractor

must meet compliance with applicable state and federal laws, regulations, and policies; TDHS storage procedures; agree to maintain accounting records for three years and 90 days; be a bonded warehouse; assume liability for any resulting audit exceptions noted by TDHS or USDA auditors.

Effective Dates of Contract: The contract will be for a 12 month period beginning July 1, 1992, and ending June 30, 1993.

Requesting Bid Packet: Interested entities may request a bid packet from Lynda Reed, Texas Department of Human Services, Special Nutrition Programs, P.O. Box 149030, MC W-313, Austin, Texas 78714-9030 or by calling (512) 450-3377.

Closing Date for Bids: All bids must be received by 5 p.m. on May 18, 1992. An optional pre-bid conference will be held May 11, 1992, at 1:30 p.m. in the Board Room (BR 125-E), John H. Winters Human Services Center, Texas Department of Human Services, 701 West 51st Street, Austin.

Issued in Austin, Texas, on April 27, 1992.

TRD-9205736 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: April 27, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆ Public Notice

The Texas Department of Human Services has published revised state plans for the provision of services to AFDC recipients who are participating in the Job Opportunities and Basic Skills Training (JOBS) Program and Supportive Services for federal fiscal years 1993 and 1994. To obtain copies of the plans send written requests to Karen Stewart, Program Specialist, Self-support Services, Mail Code E-311, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. DHS is seeking written comments from representatives of both public and private sectors regarding the content of this compliance document for the JOBS program. Written comments will be accepted through June 1, 1992. Please mail comments to Karen Stewart.

Issued in Austin, Texas, on April 24, 1992.

TRD-9205705 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: April 24, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆ Public Notice Open Solicitation

Pursuant to the Human Resources Code, Title 2, Chapters 22 and 32 and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for the county identified following, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of five

months in the continuous September–February, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Program Section, Long Term Care Department, Mail Code W-519, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m. June 1, 1992, the last day of the open solici-

tion period. Potential contractors will be placed on a waiting list for the primary selection process in the order in which the Texas Department of Health originally licensed the beds that are being proposed for Medicaid participation. The primary selection process will be completed on June 12, 1992. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 80%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

County Number	County Name	Number of Months Over	Number of Months					
			Sept	Oct	Nov	Dec	Jan	Feb
029	Calhoun	5	89.7	91.5	91.3	90.8	92.9	90.0

Issued in Austin, Texas, on April 24, 1992.

TRD-9205706 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: April 24, 1992

For further information, please call: (512) 450-3765



Pursuant to the Human Resources Code, Title 2, Chapters 22 and 32 and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for Bosque County, County Number 018, identified in the February 19, 1992, issue of the *Texas Register* (17 TexReg 2045). In addition, Crockett County, County Number 053, and Reagan County, County Number 192, identified in the March 17, 1992, issue of the *Texas Register* (17 TexReg 2045) are also being opened. Potential contractors desiring to construct a 90-bed nursing facility in the previously referenced areas must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Programs Section, Long-Term Care Department, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. Upon receipt of a reply from a potential contractor, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

Issued in Austin, Texas, on April 24, 1992.

TRD-9205707 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: April 24, 1992

For further information, please call: (512) 450-3765



Pursuant to the Human Resources Code, Title 2, Chapters 22 and 32 and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the

Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in the counties identified in the March 6, 1992, issue of the *Texas Register* (17 TexReg 1765). Those counties are also listed in this public notice. Potential contractors desiring to construct a 90-bed nursing facility in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Programs Section, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m. June 12, 1992, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: first, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in 40 TAC §19.2004(q) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to DHS ensuring payment in the event of default. If the 180-day deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline is not met, liquidated damages are 10% of the estimated total cost of the proposed or completed facility. Fourth, there must be acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to the Texas Department of Health (TDH). Each application must be complete at the time of its receipt. DHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, DHS will place an-

other public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

Occupancy rates for identified threshold counties are listed below:

County Number	County Name	Number of Months Over	Sept	Oct	Nov	Dec	Jan	Feb
059	Deaf Smith	6	90.2	91.2	91.6	91.8	92.3	92.2
128	Karnes	5	89.6	90.6	90.0	92.0	92.5	92.2
171	Moore	6	92.9	93.6	92.0	91.5	95.3	96.2

Issued in Austin, Texas, on April 24, 1992.

TRD-9205708 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: April 24, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆
State Board of Insurance
Notice of Public Hearing

Notice of Public Hearing-Consideration of proposed changes to the Texas Automobile Insurance Plan, (TAIP) as presented in an amended petition filed by the Office of Public Insurance Counsel, (OPIC) in Docket Number 1871. Additionally, the State Board of Insurance may consider amending the TAIP as outlined in the Plan under Part 8. Administration; any amendments presented by or on behalf of the governing committee or the OPIC; and any other matter relating to changes to the operation of the Plan.

Docket Number 1871. Notice is hereby, given that the State Board of Insurance will reconvene a public hearing under Docket Number 1871, Reference Number A-0392-12, beginning 1:30 p.m. on May 21, 1992, and continuing thereafter each day at times and places designated by the board until conclusion.

The purpose of the hearing will be consideration of proposed changes to the Texas Automobile Insurance Plan, (TAIP) as outlined in a petition filed by the Office of Public Insurance Counsel (OPIC). Additionally, the State Board of Insurance may consider amending the TAIP as outlined in the Plan under Part 8. Administration; any amendments presented by or on behalf of the governing committee or the OPIC; and any other matters relating to changes to operation of the Plan. The board may also consider such other matters and subjects relative to the regulation of the TAIP as the board shall determine necessary or proper, including, but not limited to, any necessary changes in the plan of operation relative to the appointment of the governing board and the amendments in the plan of operation and any other amendments of the plan of operation brought forward.

Authority and Jurisdiction. This hearing will be held in accordance with the legal authority and jurisdiction provided in the Texas Insurance Code, Articles 1.02, 1.04 and 5.96. The hearing and procedure under Docket Number 1871 will be governed the Rules of Practice and Procedure

before the State Board of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A). Rule changes will be considered under the rulemaking provisions of the Texas Insurance Code, Article 5.96.

Please direct inquiries regarding this hearing to Gloria Leal, General Counsel, Mail Code 113-2A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701, or (512) 463-6331 or to David Durden, Deputy Commissioner Property and Casualty Lines, Mail Code 102-1A, or (512) 322-3430.

Issued in Austin, Texas, on April 27, 1992.

TRD-9205749 Linda K. von Quintus-Dom
Chief Clerk
Texas Department of Insurance

Filed: April 27, 1992

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

◆ ◆ ◆
Legislative Budget Board

Budget Execution Proposal-Texas
Commission on Alcohol and Drug
Abuse

Pursuant to the Texas Government Code, §317.002(b)(2) relating to budget execution authority, I make the following budget execution proposal: The Texas Commission on Drug and Alcohol Abuse (TCADA) requests authority to use Alcohol, Drug Abuse, and Mental Health Services Block Grant (ADAMHS) funds received by TCADA in excess of \$62,108,116 for community-based chemical dependency treatment programming, giving priority to substance abusers who have now, or who have in the past, entered the criminal justice system as provided in House Bill 1, 72nd Legislature, First Called Session, 1991.

I find that the Department of Criminal Justice is unlikely to make use of these funds in fiscal year 1992 for the purposes intended by House Bill 93, 72nd Legislature, Second Called Session, 1991, which would cause these funds to lapse to the federal government and therefore be unavailable for use in prevention and treatment services for other TCADA clients, thus creating an emergency.

I therefore propose that during fiscal year 1992 TCADA be authorized to allocate for community-based chemical dependency treatment programs, funds in excess of \$62,108,226, which were originally appropriated to TCADA for fiscal year 1992 solely for the operation of treatment programming at substance abuse felony punishment facilities operated by the Department of Criminal Justice.

Bob Bullock
Lieutenant Governor
Chairman, Legislative Budget Board

Gib Lewis
Speaker of the House
Vice-chairman, Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on
April 21, 1992 by the following vote:

On the part of the Senate Yeas: 5 Nays: 0

On the part of the House Yeas: 5 Nays: 0

Issued in Austin, Texas, on April 7, 1992.

TRD-9205689 Ann W. Richards
 Governor
 Legislative Budget Board

Filed: April 24, 1992

For further information, please call: (512) 463-1166

◆ ◆ ◆
**Budget Execution Proposal-Texas Racing
Commission**

Pursuant to Texas Government Code, §317.002(b)(2), relating to budget execution authority, I make the following budget execution proposal: The Texas Racing Commission has requested that the limitation on use of out-of-state travel of \$10,000 per year in House Bill 1, 72nd Legislature, First Called Session, 1991, be increased to \$30,000.

I find that an emergency exists, in that out-of-state travel is essential to the adequate processing of pending applications and investigations of out-of-state applicants.

Funding for this proposal will be made from existing appropriations and the commission has committed to identifying additional savings to be returned to the General Revenue Fund in amount equal to funds spent on additional out-of-state travel.

I propose that the ceiling set in Rider 4. Limitation, out-of-state travel, House Bill 1, 72nd Legislature, First Called Session, 1991, be raised to \$30,000 each year of the biennium, by allowing other appropriations to be utilized for this additional purpose.

Bob Bullock
Lieutenant Governor
Chairman, Legislative Budget Board

Gib Lewis
Speaker of the House
Vice-chairman, Legislative Budget Board

I certify that this Budget Execution Proposal was adopted by the Legislative Budget Board on April 21, 1992 by the following vote:

On the part of the Senate	Yeas: 5	Nays: 0
On the part of the House	Yeas: 5	Nays: 0

Issued in Austin, Texas, on April 7, 1992.

TRD-9205690 Ann W. Richards
 Governor
 Legislative Budget Board

Filed: April 24, 1992

For further information, please call: (512) 463-1166

◆ ◆ ◆

Public Utility Commission of Texas
Notice of Application to Amend
Certification of Convenience and
Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 4, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of the City of Lubbock to amend certificated service area boundaries within Lubbock County, Docket Number 11088 before the Public Utility Commission of Texas.

The Application: In Docket Number 11088, City of Lubbock requests approval of its application to amend its service area boundary to include newly annexed territory southeast of Reese Air Force Base within its electric utility service area.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on April 22, 1992.

TRD-9205656 Mary Ross McDonald
 Secretary of the Commission
 Public Utility Commission of Texas

Filed: April 23, 1992

For further information, please call: (512) 458-0100

◆ ◆ ◆

Railroad Commission of Texas
Notice of Application for Federal
Funding

The Railroad Commission of Texas is applying to the Federal Railroad Administration (FRA) for discretionary matching funding under the local rail freight assistance (LRFA) program to rehabilitate 28.0 miles of railroad track owned by the Texas Northeastern Railroad, headquartered in Sherman. The project trackage is between Paris and Bonham (milepost 98.0 to milepost 126.0), in Lamar and Fannin counties. The objective of the project is to upgrade the Paris-Bonham line to FRA Class II standards. The goal of the LRFA program is to preserve essential rail service to local communities. A public meeting (date to be announced) will be held upon approval to inform interested parties of the details of the project. Information may be obtained from Ed Kasparik, Manager, Rail Projects, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Issued in Austin, Texas, on April 23, 1992.

TRD-9205658 Nolan Ward
 Hearings Examiner-General Law
 Legal Division

Filed: April 23, 1992

For further information, please call: (512) 463-7119

Veterans Land Board Request for Proposal

Pursuant to the Texas Civil Statutes, Article 6252-11c, notice is hereby given for solicitation of bids for a feasibility study to determine if the state, in conjunction with the Department of Veteran Affairs, should establish a Soldiers' Home Program.

Proposals should be sent to Ken Wallingford, Director of Veterans Liaison, Texas Veterans Land Board, 1700 North Congress Avenue, Room 700, Austin, Texas 78701-1496.

Written proposals must be received by 5 p.m., Central Daylight Savings Time, Thursday, June 4, 1992.

The proposals will be independently evaluated by each member of a task force committee, who will assign numerical scores to each selection criteria. The scores of the independent evaluations will be averaged to determine composite scores. The proposals will be ranked based on the composite scores.

Formal selection and acceptance of the successful offeror is subject to unanimous approval and funding of the American Legion-Department of Texas, Disabled American Veterans-Department of Texas, and Veterans of Foreign Wars-Department of Texas state conventions (Summer 1992). The Veterans County Service Officers Association of Texas, Texas Veterans Commission, and Texas Veterans Land Board will participate in the selection.

Further information will be furnished upon request. Such requests or questions should be directed to Mr. Wallingford at (512) 475-1386.

Issued in Austin, Texas, on April 22, 1992.

TRD-9205621 Garry Mauro
 Chairman
 Veterans Land Board

Filed: April 23, 1992

For further information, please call: (512) 463-5394



Texas Water Commission Invitation for Bids

This is a formal Notice to Bidders of the intention of the Texas Water Commission (TWC) to let a contract for the Geneva Industries Superfund Site Groundwater Remediation Phase.

Bid will be received until 11 a.m. local prevailing time, June 11, 1992, at the Stephen F. Austin Building, Room B-21, 1700 North Congress, Austin, and then publicly opened and read aloud in Room 106 of the Reagan Building. Specified work shall consist of providing all personnel, equipment and material for the installation, startup, and operation of the groundwater remediation system.

Plans and specifications as well as reference documents may be examined without charge at the Texas Water Commission at the following address or may be obtained for the non-refundable purchase price of \$150 each: Texas Water Commission, Superfund Engineering Section, Pollution Cleanup Division, P. O. Box 13084, 1700 North Congress, Austin, Texas 78711, Attention Gary McGill, Project Manager.

A pre-bid conference will be held at Geneva Industries Superfund Site, 9334 Canniff Road, Houston, on May 28, 1992, at 10 a.m.

A certified or cashier's check, or an acceptable bid bond in an amount not less than 5.0% of the total bid, shall accompany each bid as a guaranty that, if awarded the contract, the bidder will promptly enter into a contract with the TWC and furnish bonds on the forms provided.

A pre-award survey will be conducted by the TWC to determine if the apparent low bidder satisfies certain minimum requirements described in the Instructions to Bidders, including successful completion of work similar to that required by this contract. If the survey demonstrates that the bidder does not satisfy certain minimum requirements the bid can be rejected as described in the instructions of bidders.

The successful bidder shall be required to furnish a performance bond and a payment bond.

Time of completion shall be 3,650 days as specified and further defined in the Supplemental Conditions (00800).

Attention to bidders is directed to Texas Civil Statutes, Article 5159a (Vernon 1987) requiring that not less than the general prevailing rates of per diem wages for work of similar character in the locality where the work is performed shall be paid all laborers, workmen, and mechanics employed in the construction of public works. The contract for this project requires the successful bidder to comply with Article 5159a and the Davis-Bacon Act. Also the successful bidder will be required to comply with the Labor Standards Provisions for Federal and Federally assisted Construction Contract (EPA Form 5720-4).

Any contract or contracts awarded under this invitation for bids are expected to be 90% funded by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to the Invitation for Bids or any resulting contract. This procurement will be subject to regulations contained in 40 CFR Part 31, 32, and 35.

By signing the bid, a bidder affirms that he has not given, offered to give, nor intended to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, labor, or service to a public servant in connection with the submitted bid. Failure to sign the BID or signing it with a false statement, shall void the submitted BID or any resulting contract, and the bidder shall be removed from all BID lists (State Purchasing and General Services Commission, 1 Texas Administrative Code, §113.5 [0] [July 1, 1988]).

Attention of bidders is further directed to Public Law 101-121, §319, which prohibits the use of Federal funds for lobbying the Executive and Legislative Branches of the Federal Government in connection with the specific contract, grant, or loan, and requires disclosure of such lobbying even where no federal funds are used.

Equal opportunity in employment: All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. Bidders on this work will be required to comply with the President's Executive Order Number 11246, as amended. The requirements for bidders and contractors under this order are explained in the contract documents.

Issued in Austin, Texas, on April 27, 1992.

TRD-9205728 Mary Ruth Holder
 Director Legal Division
 Texas Water Commission

Filed: April 27, 1992

For further information, please call: (512) 463-7785



Public Hearing Notice

The Texas Water Commission will conduct a public hearing beginning at 10 a.m. , June 4, 1992, John H. Reagan Building, 105 West 15th Street, Room 104, Austin.

The hearing will consider proposed fiscal year 1991 revisions to the State of Texas Water Quality Management Plan. These revisions, pertaining to entities on the following fact sheet, will provide a more current assessment of municipal wastewater facility needs, population projections, and management agency designation. This report utilizes more recent facility-specific information than that available in previous water quality management plans. The proposed revisions to the water quality management plans have been prepared subject to the requirements of the Continuing Planning Process that are identified in Title 40, Code of Federal Regulations, Part 35, Subpart G. These plans are developed and revised pursuant to Chapter 26 of the Texas Water Code and the Federal Clean Water Act, §208 and §205(j). The hearing is being conducted pursuant to the Texas Water Code, §§5.102, 5.112 and 26.012.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed FY 91 revisions to the State of Texas Water

Quality Management Plan. Written testimony which is submitted prior to or during the scheduled public hearing will be included in the record. The Commission would appreciate a receiving a copy of all written testimony at least five days before the scheduled hearing. Copies of written testimony or questions concerning the public hearing should be addressed to Linda Brookins, Texas Water Commission, Standards and Assessments Division, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8443.

Copies of the draft FY 91 revisions to the water quality management plan are available for public inspection in Room B20 (Library) of the Stephen F. Austin Building at 1700 North Congress Avenue, Austin. Requests for copies of the draft should be addressed to Linda Brookins, Texas Water Commission, Standards and Assessments Division, P. O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8443. When requesting a copy or sending a query by mail, please include your complete return address and telephone number. Copies of the draft revisions have been provided to all entities shown on the attached fact sheet.

Copies of the draft FY 90 Coastal Bend Council of Governments Water Quality Management Plan are also available for local public inspection at 2910 Leopard Street, Corpus Christi, Texas. Copies of the draft FY 90 Lower Rio Grande Valley Development Council Population Projections: 1990 to 2010 are also available for local public inspection at 4900 North 23rd Street, McAllen.

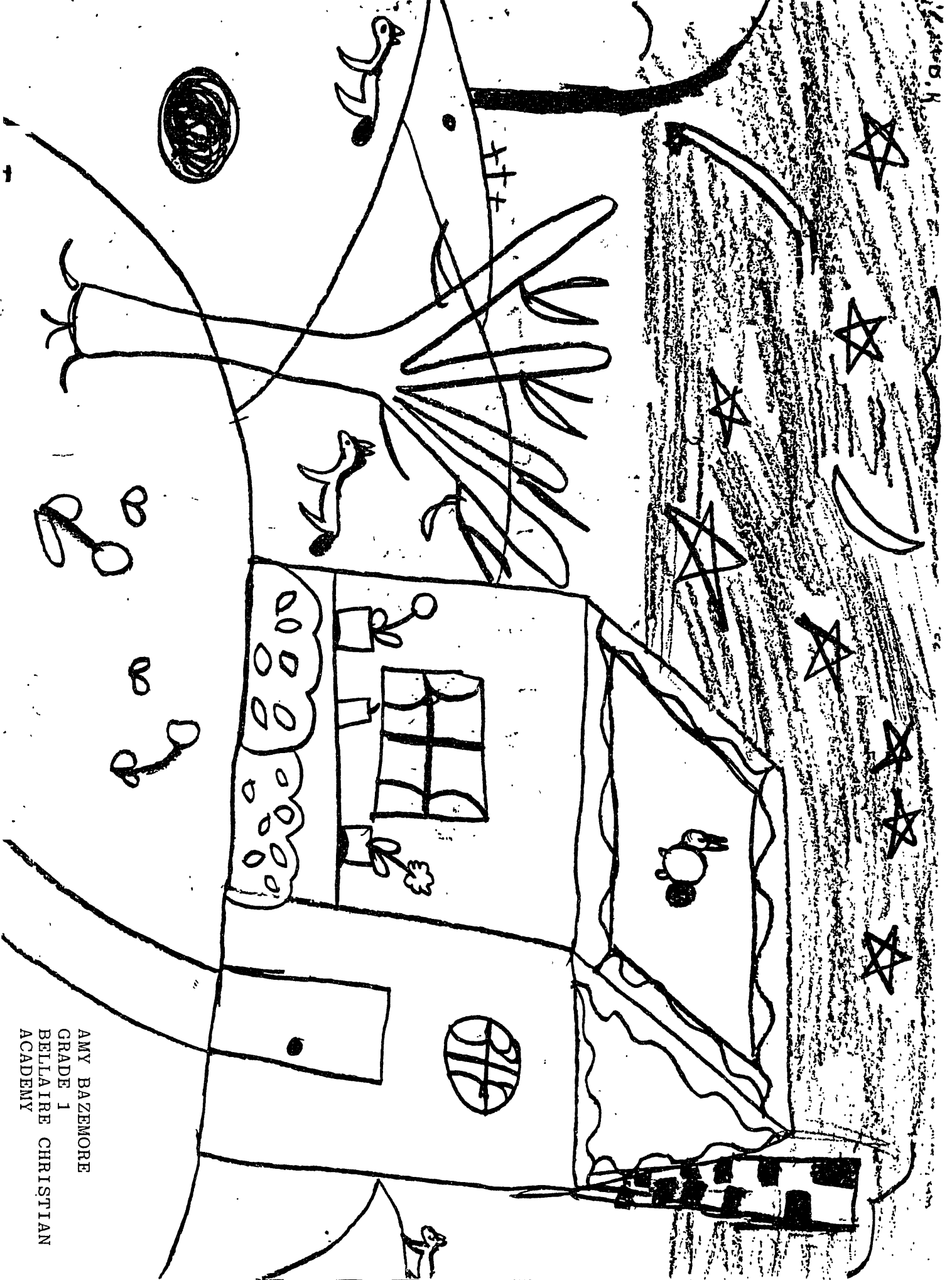
Issued in Austin, Texas, on April 27, 1992.

TRD-9205750 Mary Ruth Holder
 Director Legal Division
 Texas Water Commission

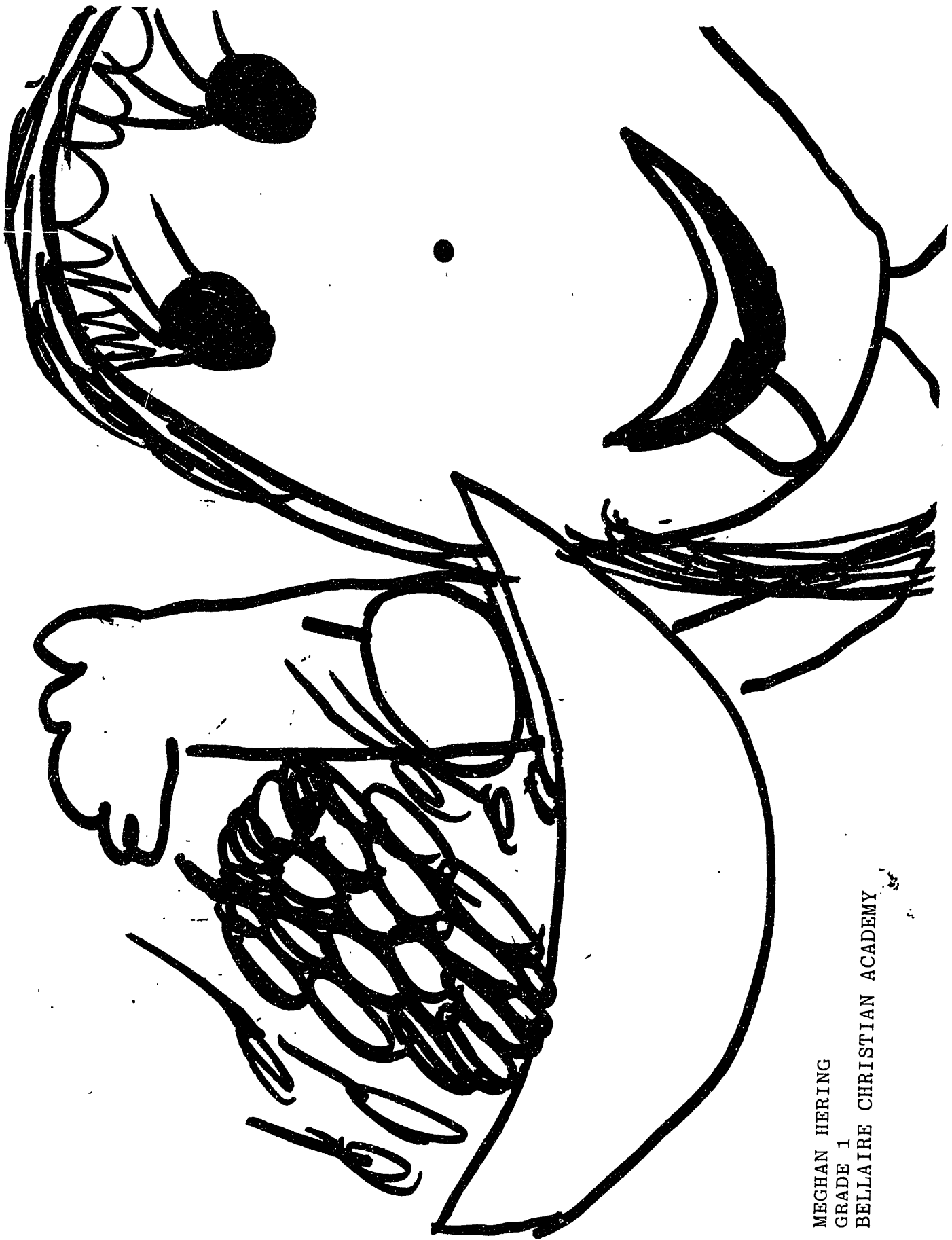
Filed: April 27, 1992

For further information, please call: (512) 463-7785





AMY BAZEMORE
GRADE 1
BELLAIRE CHRISTIAN
ACADEMY



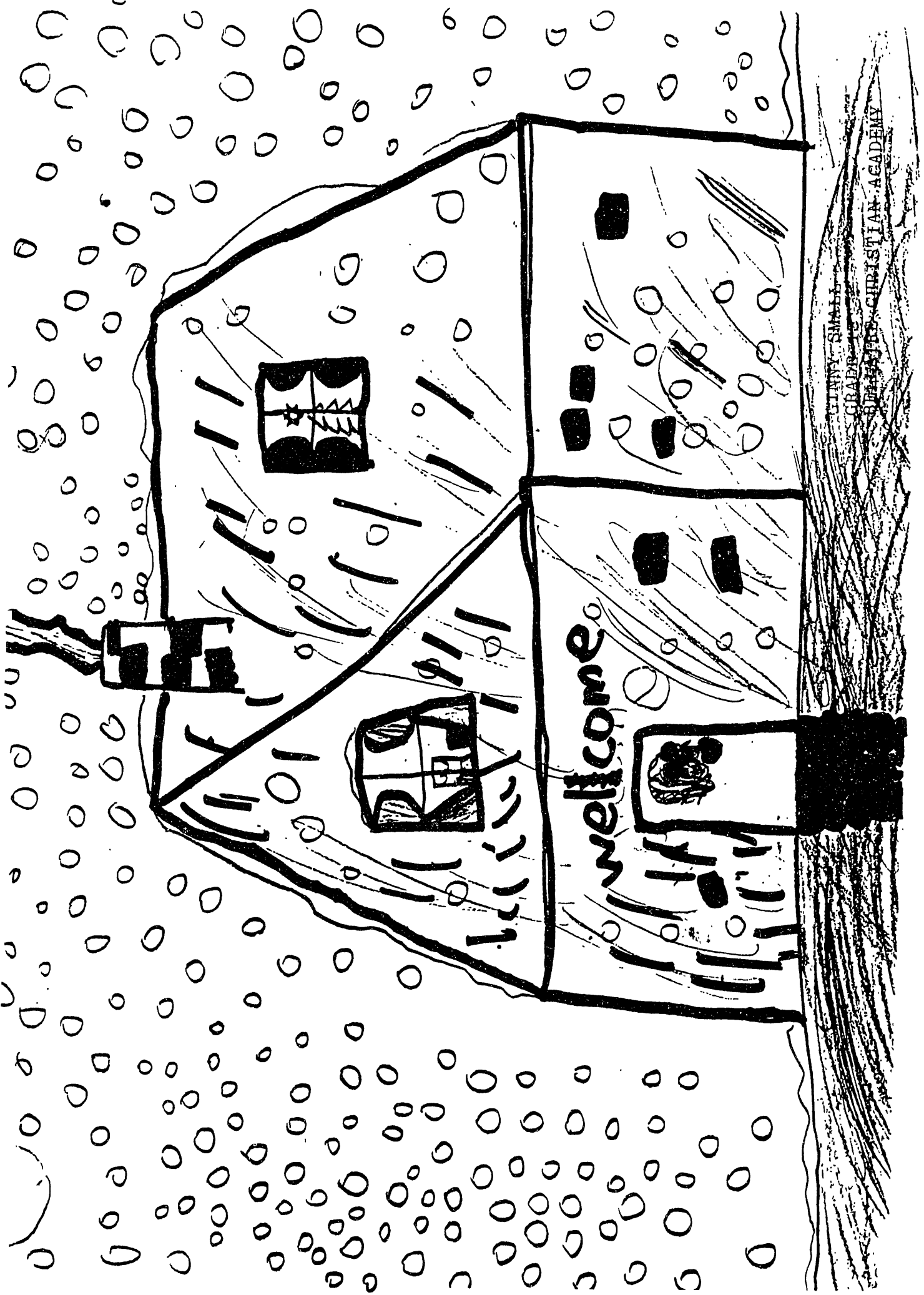
MEGHAN HERING
GRADE 1
BELLAIRE CHRISTIAN ACADEMY

I Love you
Jesus.



BLAIR WILLIAMSON
GRADE 1
BELLAIRE CHRISTIAN ACADEMY

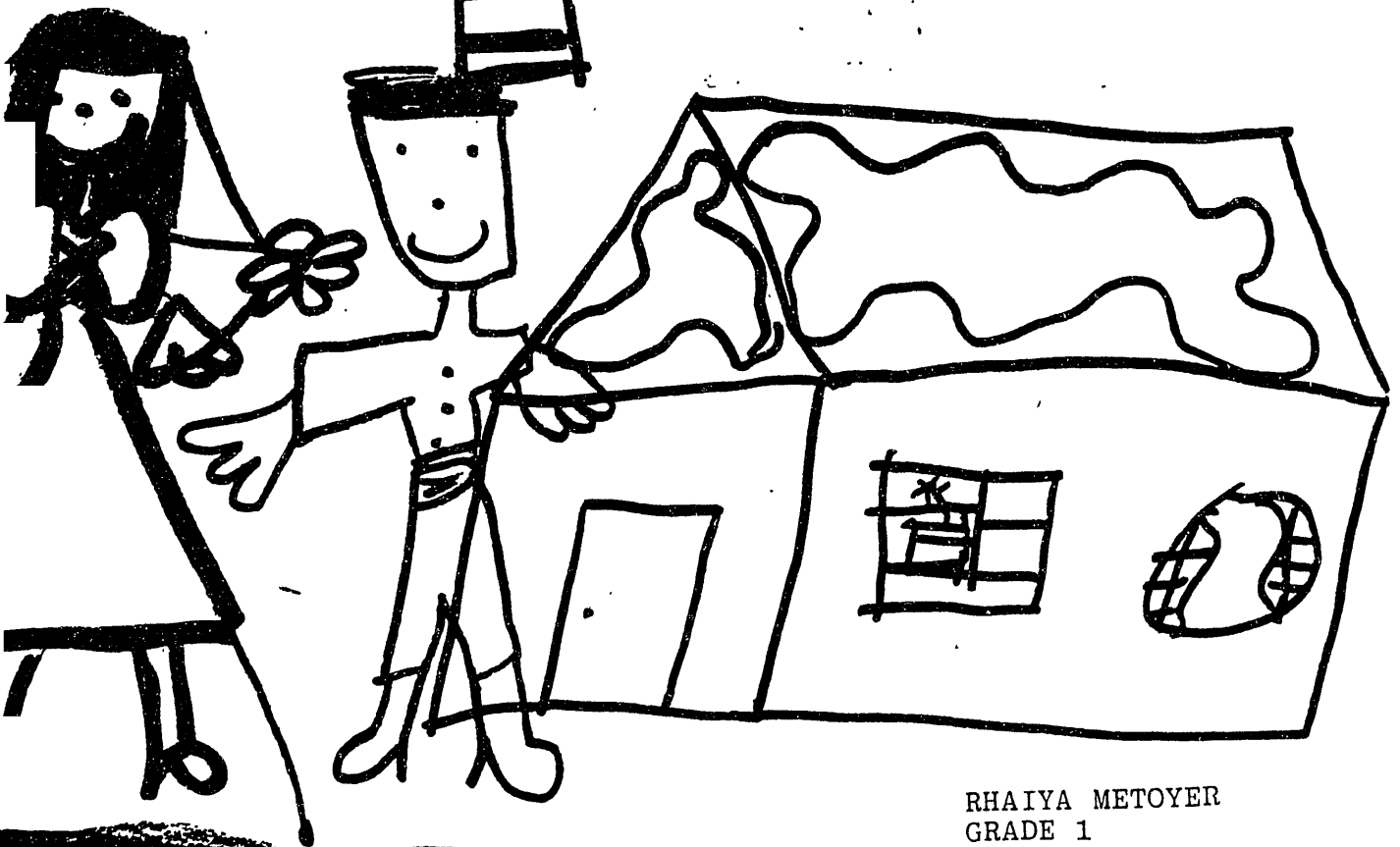
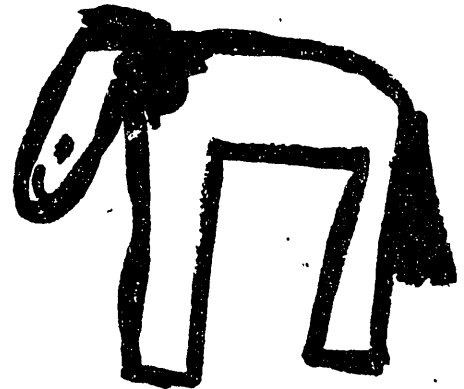
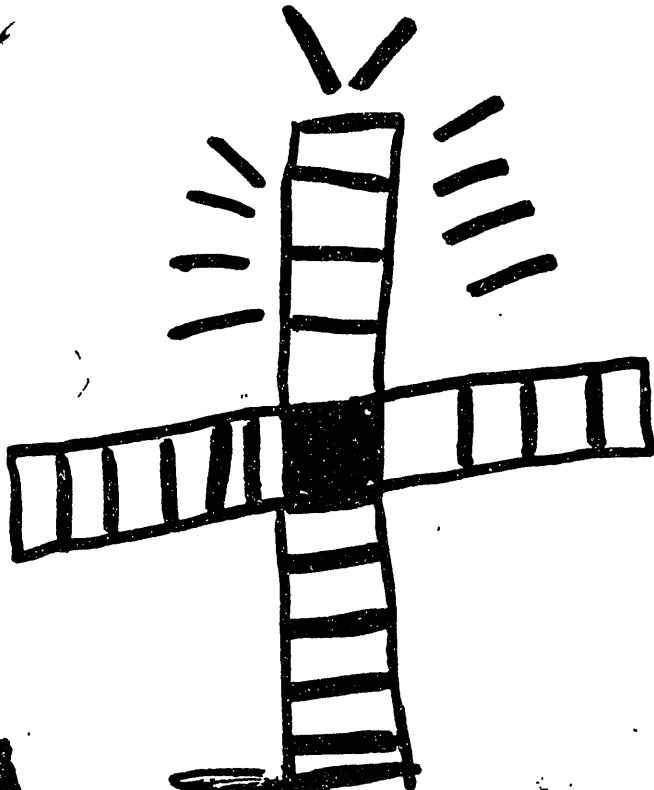
I Love You Thanks



LINNY SMALLS
GRADE 10
SHERBROOKE CHRISTIAN ACADEMY

I Love you

Jesus. ✓



RHAIYA METOYER
GRADE 1
BELLAIRE CHRISTIAN ACAD

Jesus said ~~no~~ I will make fishers of men



ROSANNE WHITMAN
GRADE 1
ST. JOSEPH CHRISTIAN ACADEMY

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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