

Texas Register

Volume 17, Number 59, August 7, 1992

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions costs: one year - printed, \$95 and electronic, \$90; six-month - printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

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Information Available: The ten sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

- Governor** - Appointments, executive orders, and proclamations
- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency 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- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows: 17 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 TexReg 3"

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TR10 number.

Texas Administrative Code

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

How to Cite: Under the TAC scheme, each agency section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

Texas Register Publications



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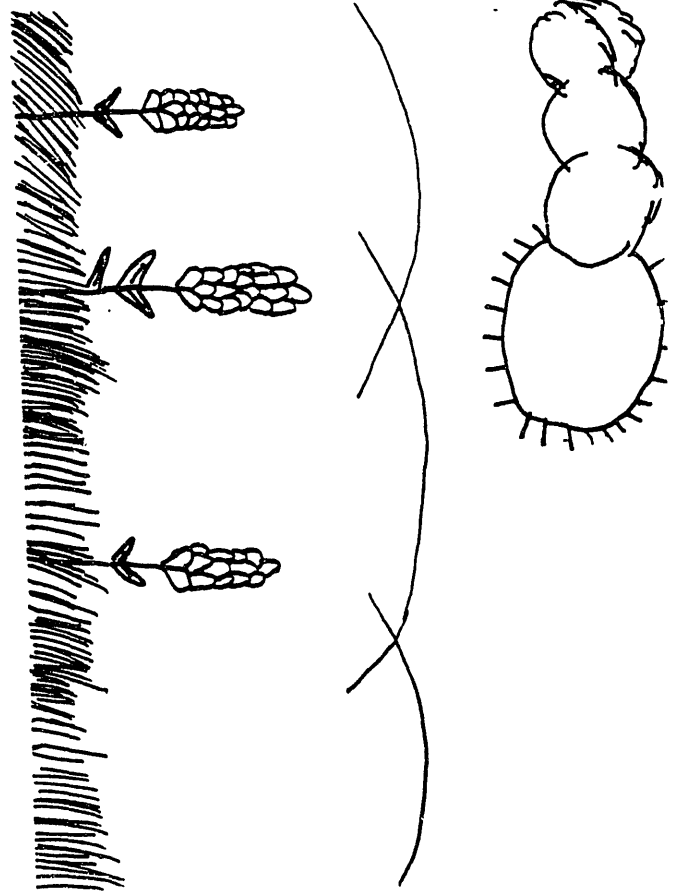
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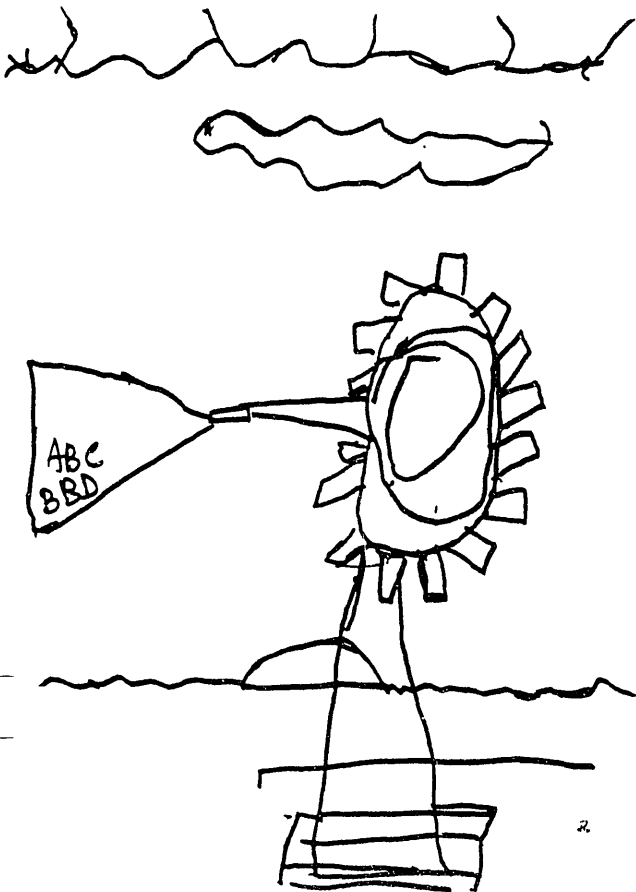


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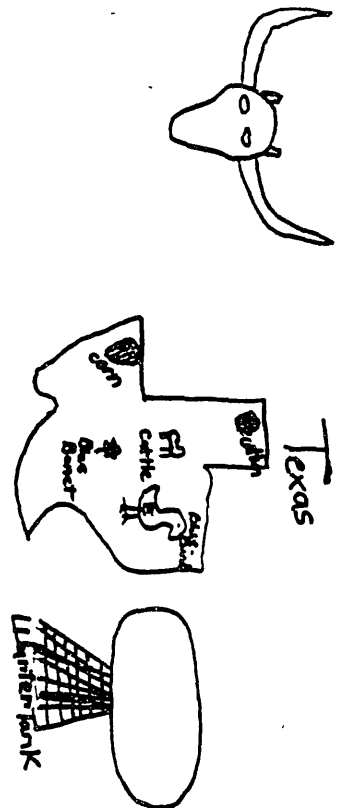
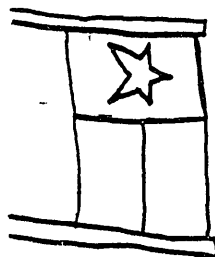
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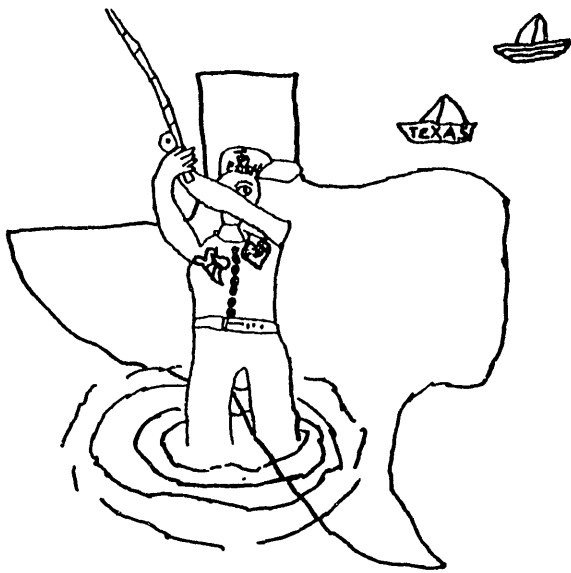
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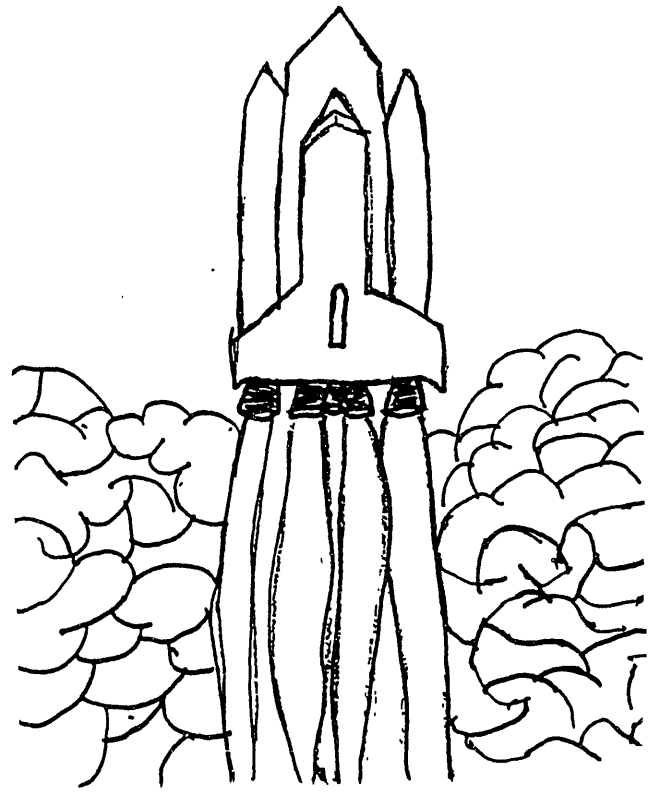
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LOMB STAR





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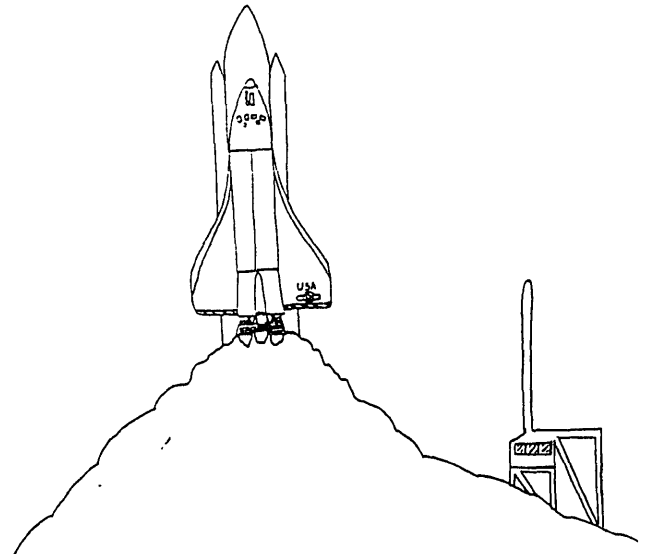
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HOME ON THE
RANG!

I'm a Texas
cowgirl!



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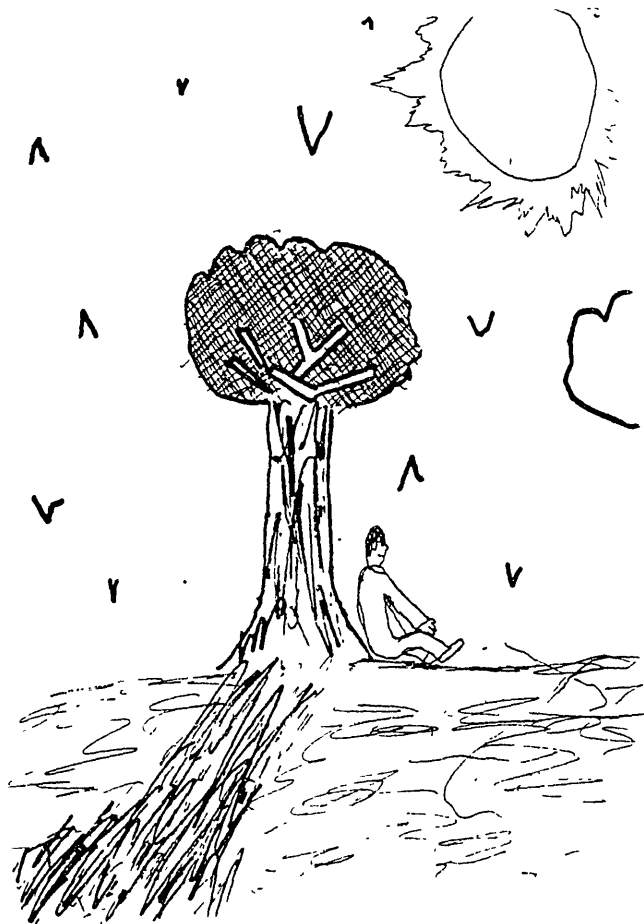


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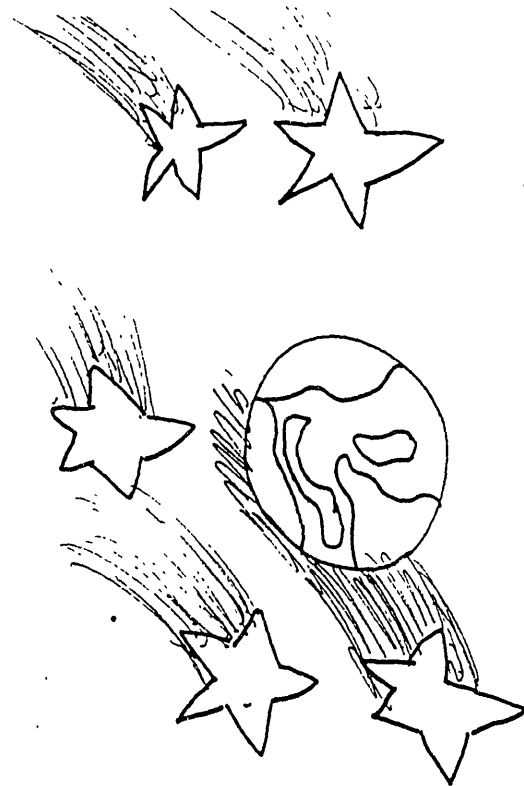


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SAVE THE PLANET!

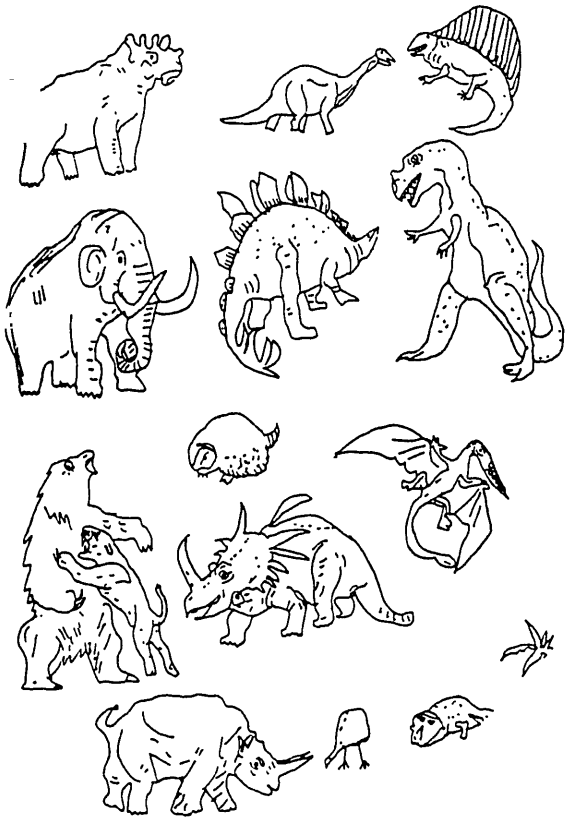
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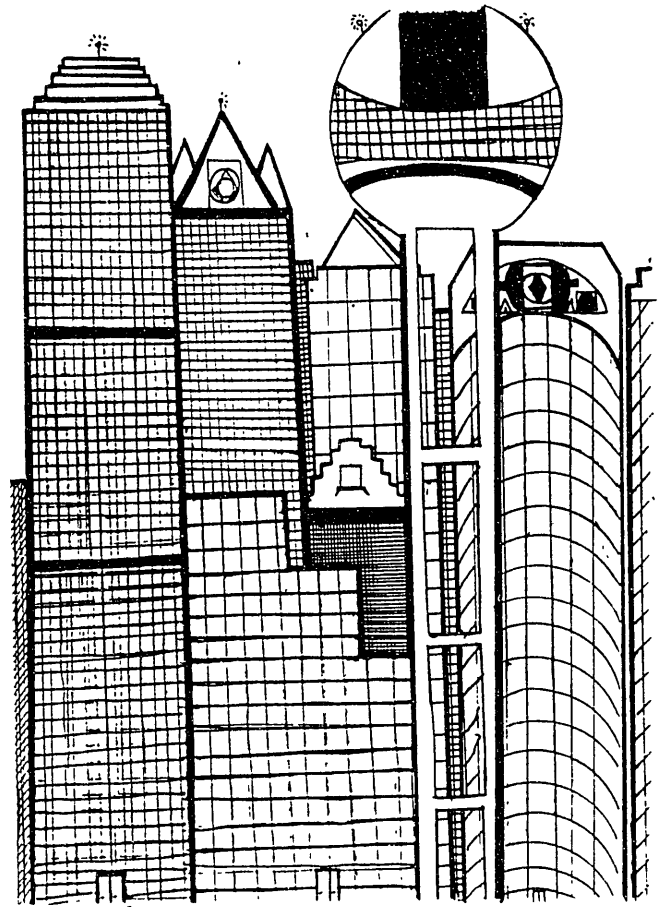
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School: Fabens High School



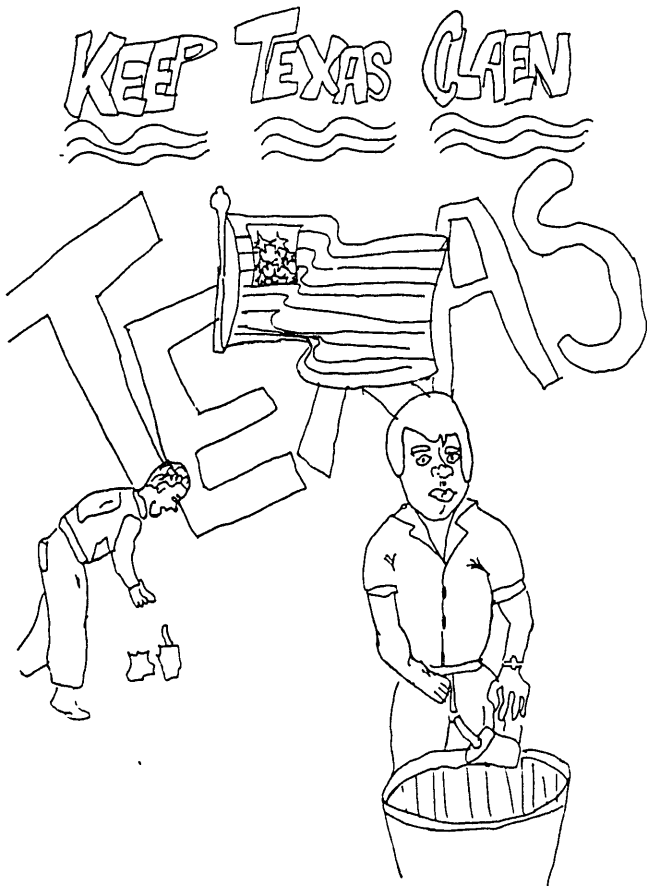
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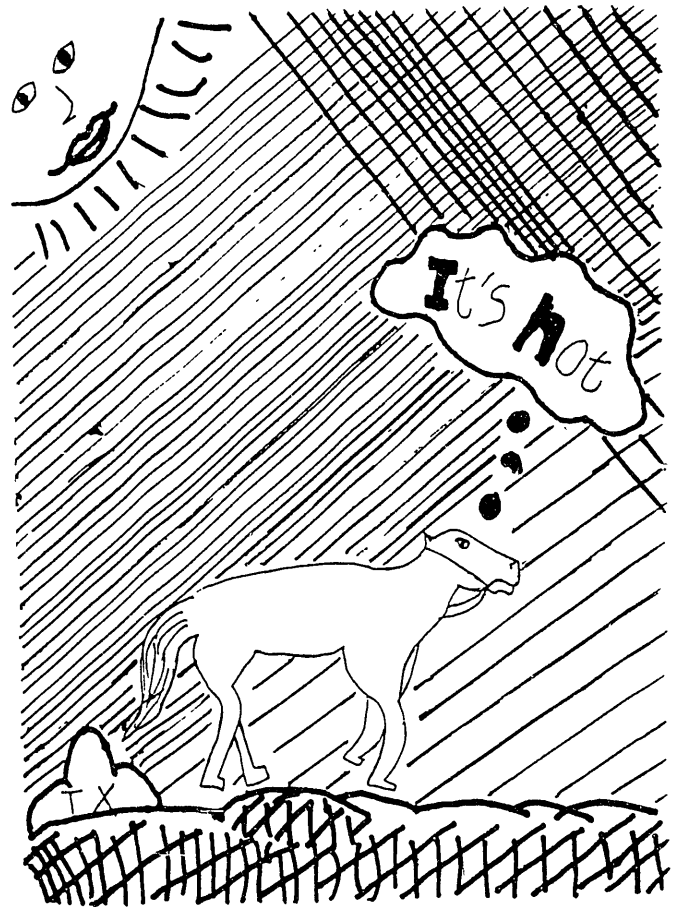
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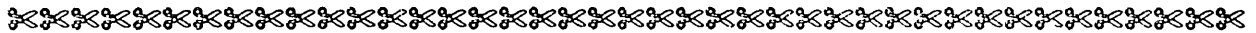
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*The Texas Register Readers Choice Award
continues with this issue!*

You will be able to continue to VOTE throughout the summer on what you think is the best of the 1991-1992 school art project submissions. In this issue, we finish publishing the second category of artwork, featuring submissions from children in fourth through sixth grade. Also in this issue, we begin publishing artwork from students in grades seven through nine. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "7-1" will indicate that the picture is the first submission in the seventh through ninth grade group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.

The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.

The artwork does not add additional pages and does not increase the cost of the Texas Register.



1991 - 1992 Texas Register Readers Choice Award.

Please enter my vote for the "best of the best" :

Picture #4- _____.

Picture #7- _____.

Picture #4- _____.

Picture #7- _____.

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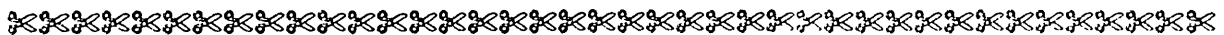
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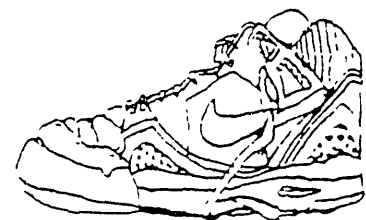
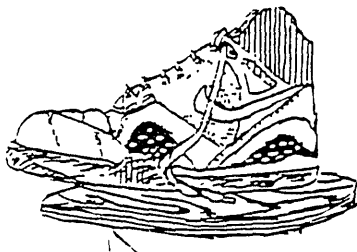
Organization: _____

Please return this form to: Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

For more information contact Roberta Knight (512) 463-5561.



Lets get started on the right foot!



Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

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

Opinions

EAO-31. Whether the lobby statute prohibits a private company from making certain donations or expenditures for the benefit of state agencies or state universities. (AOR-22)

Summary of Opinion Chapter 305 of the Government Code does not apply to gifts made to a state agency rather than to individual officers or employees of a state agency. Whether a particular agency has authority to accept a gift is governed by other law, over which the Ethics Commission has no interpretive authority.

Expenditures for an educational program presented to employees of a state agency in their capacity as state employees would not be expenditures reportable under Chapter 305 of the Government Code if the program primarily benefits the agency rather than the individual.

State colleges and universities are "state agencies" for purposes of Chapter 305 of the Government Code. A private company that purchases meals for employees of a state college or university is engaging in lobby activity if the company's purpose in purchasing the meals is to communicate to influence action by the college or university.

EAO-32. Whether the acceptance of funds from a corporation by a general-purpose committee requires the inclusion of the name of the corporation in the committee's name pursuant to the Election Code. (AOR-23).

Summary of Opinion The name of the general-purpose committee must include the name of each corporation that makes a political expenditure to finance the establishment or administration of the committee.

EAO-33. Whether employees of the Texas Guaranteed Student Loan Corporation are employees of a state agency for purposes of the lobby statute. (AOR-32)

Summary of Opinion The Guaranteed Student Loan Corporation is not a state agency or a political subdivision for purposes of Chapter 305 of the Government Code. Therefore, an employee of the Guaranteed Student Loan Corporation must register as a lobbyist if he meets either the compensation threshold or the expenditure threshold in the

lobby statute. Communications made to the Guaranteed Student Loan Corporation are not subject to regulation under the lobby statute.

EAO-34. Whether a person required to register as a lobbyist may give weekly parties to which all legislators and their staffs are invited. (AOR-36)

Summary of Opinion A person who is registered as a lobbyist may give a party to which all legislators and their staffs are invited, at which the registrant pays for the band and individuals pay for their own food and drink. The lobbyist must report the expenditures for the band on a monthly lobby activity report as an event to which all members of the legislature were invited. Since the party is an entertainment event, the lobbyist must comply with the Chapter 305 requirement that the lobbyist be present at the event.

EAO-35. Regarding the application of the Election Code, §253.041(b) which limits an officeholder's or candidate's use of political contributions for payments to a business in which the candidate or officeholder has a significant interest. (AOR-40)

Summary of Opinion A candidate who owns 50 percent of the stock in a corporation engaged in the advertising business may make a payment from a political contribution to the corporation to purchase advertising services and supplies if the payment is in the amount necessary to reimburse the corporation for actual expenditures. A payment greater than that amount would be in violation of §253.041. A payment less than that amount would be an impermissible corporate contribution.

EAO-36. Acceptance of a plaque by an officer of an executive branch agency. (AOR-44)

Summary of Opinion As a general rule, the receipt of a plaque could not be reasonably regarded as pecuniary advantage and is therefore not a benefit for purposes of Chapter 36 of the Penal Code.

EAO-37. Whether a corporation may send a notice to its employees advising them of an upcoming election and including questions and answers about voting. (AOR-48)

Summary of Opinion An expenditure on a nonpartisan notice to inform employees

about an election and encouraging people to register to vote is not a political expenditure because it is not made in connection with a campaign for an elective office or on a measure, nor is it an officeholder expenditure. Therefore a corporate expenditure to provide such a notice is not prohibited by the Election Code.

EAO-38. Whether an incorporated trade association sponsoring a convention may offer registrants two payment options: either to pay the trade association or to pay a lesser amount to a political committee. (AOR-49)

Summary of Opinion An incorporated trade association may not give individuals the option of making a payment for registration at a convention to a political committee rather than to the trade association. There would be exceptions to this rule for contributions to a political committee for supporting or opposing measures exclusively or for expenditures to finance the establishment or administration of a general-purpose committee.

EAO-39. Time frame in which a person must register as a lobbyist once he has engaged in activity requiring registration. (AOR-50)

Summary of Opinion A person who receives compensation for communicating directly with members of the legislative or executive branch to influence legislation or administrative action is required to register not later than the fifth day after the date on which the person or the person's employee makes the first direct communication that gives rise to the registration requirement.

EAO-40. Whether a legislator is required to register as a lobbyist if he communicates with the officers and employees of a regulatory agency but neither receives compensation nor expends any money. (AOR-53)

Summary of Opinion A legislator who received no compensation or made no expenditures in connection with communications to agency officers or employees in regard to a pending permit application would not be subject to registration or reporting under Chapter 305 of the Government Code.

EAO-41. Whether a legislator may provide legal services to a special-purpose district. (AOR-54)

Summary of Opinion The statutes amended by Senate Bill 1 of the 72nd Legislature do not prohibit a legislator from accepting employment from a special district.

EAO-42. expenditures of public funds to compensate or reimburse the expenses of a person who communicates with a member of the legislative branch to influence legislation. (AOR-62)

Summary of Opinion The Government Code, §305.026(a) requires reporting of any expenditure of public funds during a calendar year to compensate or reimburse the expenses over \$50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation. For purposes of §305.026(d), the charter, by-laws, or other organizational rules of an association would determine what type of political subdivision is eligible for membership in the statewide association. A person employed by a statewide association may be excepted under subsection (c) regardless of the percentage of the eligible political subdivisions that make up its membership.

EAO-43. Lobby registration requirements of corporation employees who research and analyze proposals concerning matters to be considered by the legislature. (AOR-65)

Summary of Opinion A person who does not communicate with a member of the legislative or executive branch is not required to register as a lobbyist, even if that person is compensated to perform work for someone else who communicates with members of the legislative or executive branch to influence legislation or administrative action. If a person communicates directly with a member of the legislative or executive branch to influence legislation or administrative action, however, the time that person spends on activities such as

conducting research to prepare for the communication is included in calculating whether the registration threshold has been met and in calculating the amount of compensation that must be reported.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800. Issued in Austin, Texas, on July 30, 1992

TRD-9210502

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: July 23, 1992

For further information, please call: (512) 463-5800

Opinion Requests

AOR-87. The Texas Ethics Commission has been asked to consider the following questions about the situation described below:

1. Can a member or employee of the executive or legislative branch accept and be awarded a prize if he/she has paid their own registration fee?
2. Is it the responsibility of the registered lobbyist who would be present at the tournament to report this prize as an expenditure?
3. Can a member or employee of the executive or legislative branch be eligible to win a door prize if he/she has paid their own registration fee?
4. If a state employee participating in the tournament had taken the day off from work, would the same reporting procedures still be required?

AOR-88. The Texas Ethics Commission has been asked to consider whether the Texas Low-Level Radioactive Waste Disposal Authority is a "regulatory agency" for purposes of Texas Civil Statutes, Article 6252-9b, §7A(b), and related questions.

AOR-89. The Texas Ethics Commission has been asked to consider whether Chapter 305 of the Government Code prohibits a registered lobbyist from paying for transportation and lodging for a legislator if the legislator subsequently reimburses the registrant. The requestor asks what method is to be used to calculate the value of lodging.

AOR-90. An organization has asked whether its production and distribution of a newsletters requires its member-volunteers to register as lobbyists under Chapter 305. The newsletter contains information about legislative members. The organization would like to sell the newsletter to non-members.

AOR-91. The Texas Ethics Commission has been asked whether lobbyists may pay part of the expenses of a banquet to which members of the legislature are invited and, if so, how the expenditures are to be reported. A social organization sponsors the banquet. Members of the legislature buy tickets to attend the banquet. In the past, lobbyists have made contributions to cover part of the expenses

AOR-92. The Texas Ethics Commission has been asked whether members of the board of directors of a municipal utility district and members and employees of river authorities are "members of the executive branch" under Chapter 305 of the Government Code.

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

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

TRD-9210501

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: July 23, 1992

For further information, please call: (512) 463-5800

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 10. COMMUNITY DEVELOPMENT

Part IV. Texas Department of Housing and Community Affairs

Chapter 49. Low-Income Rental Housing Tax Credit Rules

• 10 TAC §§49.1-49.13

The Texas Department of Housing and Community Affairs is renewing the effectiveness of the emergency adoption of repealed §§49.1-49.13, for a 60-day period effective July 29, 1992. The text of repealed §§49.1-49.13 was originally published in the April 7, 1992, issue of the *Texas Register* (17 TexReg 2439).

Issued in Austin, Texas on July 29, 1992.

TRD-9210389 Anne O. Paddock
Acting General Counsel
Texas Department of
Housing and
Community Affairs

Effective date: July 29, 1992

Expiration date: September 27, 1992

For further information, please call: (512) 475-3917



The Texas Department of Housing and Community Affairs is renewing the effectiveness of the emergency adoption of new §§49.1-49.13, for a 60-day period effective July 29, 1992. The text of new §§49.1-49.13 was originally published in the April 7, 1992, issue of the *Texas Register* (17 TexReg 2439).

Issued in Austin, Texas on July 29, 1992.

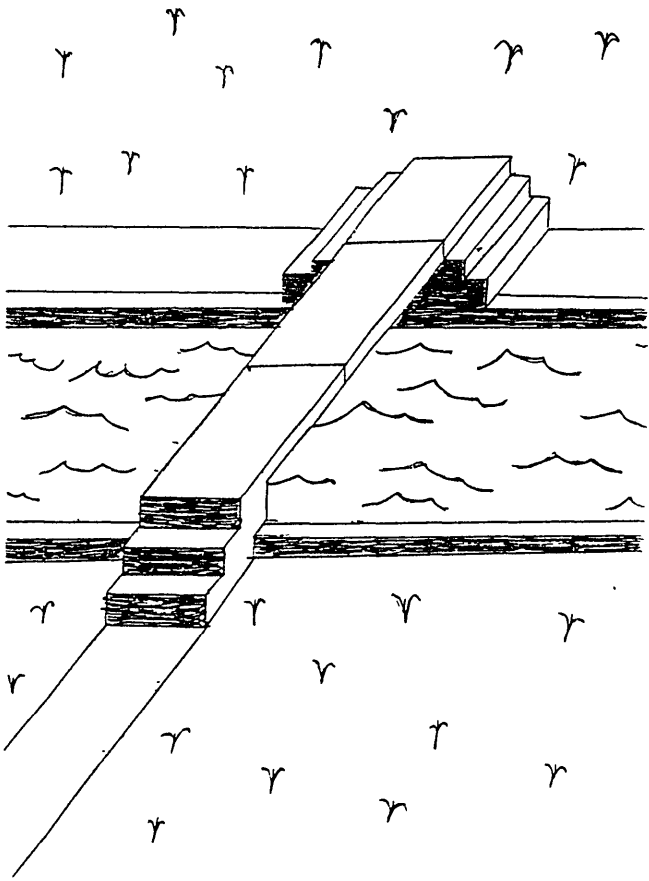
TRD-9210390 Anne O. Paddock
Acting General Counsel
Texas Department of
Housing and
Community Affairs

Effective date: July 29, 1992

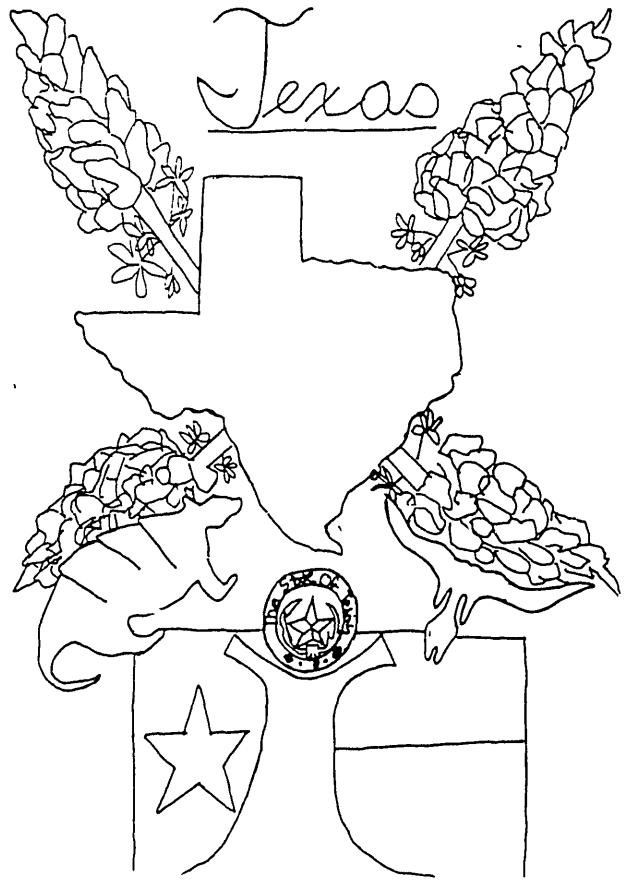
Expiration date: September 27, 1992

For further information, please call: (512) 475-3917



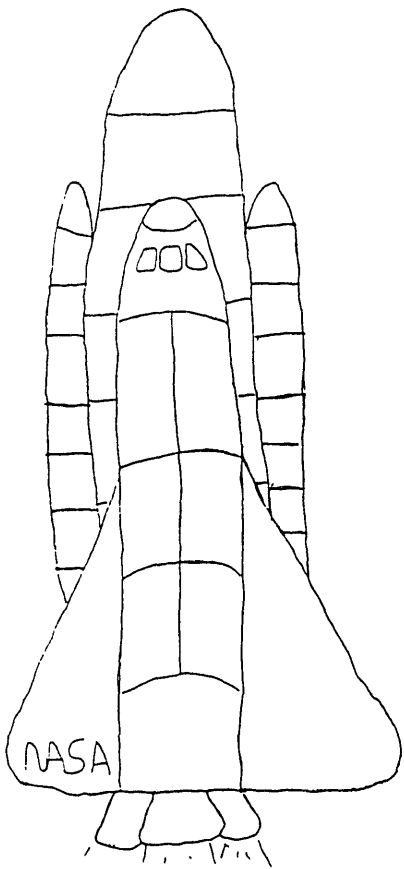


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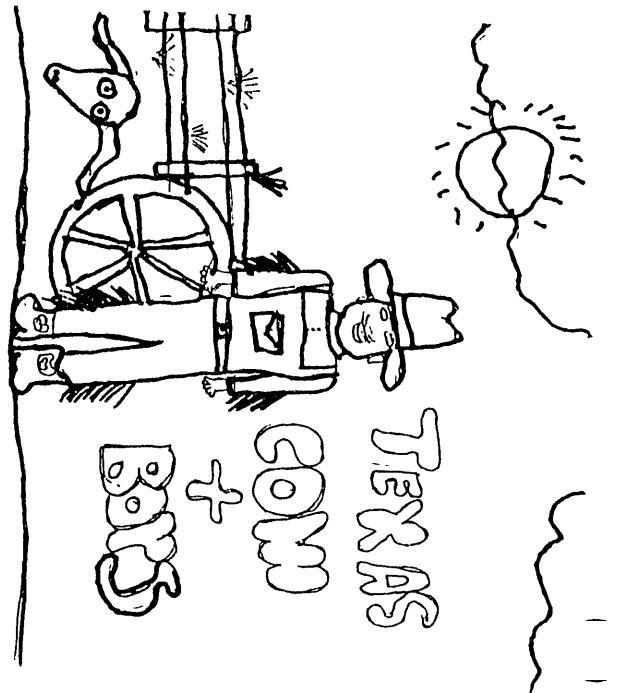


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Proposed Sections

- 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 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans

• 1 TAC §251.2

(Editor's note The text of the following section proposed for repeal will not be published The section may be examined in the offices of the Advisory Commission on State Emergency Communications or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Advisory Commission on State Emergency Communications proposes the repeal of §251.2, concerning guidelines for regional plan amendments in order to clarify and streamline the plan amendment process and allow more latitude for a council of governments to make 9-1-1 implementation decisions in its region. The proposed section also allows for enhancements to 9-1-1 systems where technically and financially feasible and clarifies that 9-1-1 equalization funding may be used to implement both regional and district plans. This section is repealed so that a substantially revised section may be adopted.

Mary A. Boyd, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Boyd also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be improved effectiveness and reliability of 9-1-1 call delivery systems in a region and increased assurance of meeting scheduled local 9-1-1 emergency telephone service dates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78711.

The repeal is proposed under the Health and Safety Code, §§771.055, 771.056, 771.057, and 771.072, which provides the Advisory Commission on State Emergency Communi-

cations with the authority to develop and amend a regional plan for the establishment and operation of 9-1-1 service throughout a 9-1-1 regional that meets the standards established by the commission according to the procedures determined by the commission. Authority also allows that money collected per §771.072 may be allocated to an emergency communication district regardless of whether the district is participating in the applicable regional plan.

§251.2. Guidelines for Regional Plan Amendments.

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 July 29, 1992.

TRD-9210434

Mary A Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Earliest possible date of adoption: September 7, 1992

For further information, please call. (512) 327-1911



The Advisory Commission on State Emergency Communications proposes new §251.2, concerning guidelines for regional plan amendments, in order to clarify and streamline the plan amendment process by delegating some functions and actions to the councils of governments and the commission staff. The section will facilitate some 9-1-1 implementation decisions, and allow for enhancements to 9-1-1 systems where technically and financially feasible. It clarifies that 9-1-1 equalization funding may be used to implement both regional and district plans. The commission will continue to examine the financial impact of plan amendments, and consider any funding requests from districts.

Mary A. Boyd, executive director, 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.

Ms. Boyd 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 improved effectiveness and reliability of 9-1-1 call delivery systems in a region and increased assur-

ance of meeting scheduled local 9-1-1 emergency telephone service dates. No historical data is available, however, there appears to be no direct impact 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 the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78711.

The new section is proposed under the Health and Safety Code, §§771.055, 771.056, 771.057, and 771.072, which provides the Advisory Commission on State Emergency Communications with the authority to develop and amend a regional plan for the establishment and operation of 9-1-1 service throughout a 9-1-1 region that meets the standards established by the commission according to the procedures determined by the commission. Authority also allows that money collected per §771.072 may be allocated to an emergency communication district regardless of whether the district is participating in the applicable regional plan.

§251.2. Guidelines for Regional Plan Amendments.

(a) On March 6, 1991, the Advisory Commission on State Emergency Communications adopted a goals and philosophy statement regarding the implementation of 9-1-1 emergency telephone service. The following guidelines will govern amendments to approved regional plans and establish a process for modifying plans. The guidelines are intended to clarify the process and allow more latitude to the councils of governments and the commission staff to make decisions regarding the implementation of 9-1-1 systems. However, the Commission retains the right to examine, approve, or disapprove plans or impose amendments of regional plans as may be warranted.

(b) Changes to approved regional plans can be classified into three categories: council of governments approval, administrative approval, and official commission approval.

(1) Council of governments approval.

(A) A council of governments may make changes to its approved

regional plan when situations are discovered that require immediate action to prevent disruption of the implementation schedule, so long as additional surcharge funds are not required. Authorized changes must be consistent with ACSEC policies and procedures and may not add substantially to the cost or deviate from the original design of the 9-1-1 system.

(B) A council of governments may also authorize a delay in proposed 9-1-1 service date if the delay is going to be less than three months.

(C) Changes made to the regional plan must be reported in writing to the commission within 15 days of making the change.

(2) Administrative approval.

(A) Administrative approval is defined as changes to council of governments regional plans in which the commission staff is authorized to approve expenditures. Staff will review requests for approval and report the changes to the full commission at its next regularly scheduled meeting.

(B) Commission staff may approve changes to a council of governments regional plan, so long as:

(i) each component, as determined by staff, of a regional plan total does not exceed \$5,000;

(ii) each component complies with established commission policies and procedures and has been previously approved by the commission within the requesting council of governments regional plan.

(C) Multiple requests of the same item shall be considered one component. Allowable expenditures in this category include, but are not limited to, the following:

(i) change in the number of circuits, telephone sets, printers, 9-1-1 positions, or other equipment already approved in a plan;

(ii) a three- to six-month delay in service date;

(iii) network changes and CPE cost revisions;

(iv) remotes;

(v) site preparations; and

(vi) minor changes needed to implement a plan.

(D) In situations where a regional plan undergoes multiple amendments

within a short time frame and the commission staff considers the requests to be excessive, the plan amendments will be forwarded to the Planning and Implementation Committee for review.

(E) All approvals must be reported to the Planning and Implementation Committee at the next regularly scheduled commission meeting. The committee will review these changes and report them to the full commission.

(3) Commission approval. The commission at its regularly scheduled Planning and Implementation Committee meeting will review plan amendments that exceed the authorization guidelines set in place for councils of governments and commission staff, and make its recommendation to the full commission. Plan amendments in this category include, but are not limited to, the following.

(i) increase in the number of public safety answering points;

(ii) addition of automatic location identification and/or selective routing features,

(iii) purchase of recorders;

(iv) purchase of generators;

(v) withdrawal or inclusion of cities or counties to the regional plan;

(vi) plan amendment components not covered by commission policy; and

(vii) councils of governments annual administrative budgets.

(4) Emergency situations. If emergency situation arises that would normally require official commission action but must be addressed in a timely manner, the ACSEC executive director shall contact the commission chairman for consideration of an emergency approval.

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

(1) 9-1-1 call delivery-Delivery of a 9-1-1 call to the agency responsible for providing the emergency service required.

(2) UPS (uninterrupted power source) -Equipment that is designed to provide a constant power source for electronic systems, capable of operating independently, for a designated period of time, should public or emergency electrical power sources fail.

(3) Surge protection devices-Devices designed to protect sensitive electronic equipment by preventing exces-

sive electrical power from reaching and damaging such equipment.

(4) Recorders-Devices that capture and retain sound.

(A) Voice or tape loggers. A device that records sound on a permanent source for later review.

(B) Instant recall recorder. A device that records and temporarily stores calls for immediate review.

(5) Paging systems-A radio system capable of transmitting tone, digital, and/or voice signals to small receiving devices designed to be carried by an individual.

(6) Security devices-Devices whose use is specific to the protection of 9-1-1 systems from intentional damage.

(7) Power backup-Power provided by a generator in the event regular utility services are interrupted.

(d) By statute, 9-1-1 equalization funding may be used to implement both regional and district plans. Funding requests from districts will receive consideration. The following are funding parameters.

(1) UPS (uninterrupted power source). Funding may be approved for UPS systems in areas where other emergency power systems are not available or have been provided from other than 9-1-1 funding sources. Generally, 9-1-1 funding will not be used to provide both emergency power and UPS. At least 75% of the capacity of any UPS system funded should directly support an existing (or planned) 9-1-1 system.

(2) Surge protection. Funding may be approved for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment.

(3) Recorders.

(A) Voice or tape loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch), however, 9-1-1 funding will not be authorized for systems whose capacity clearly exceed actual or anticipated 9-1-1 requirements. Shared funding of larger systems to accommodate both a 9-1-1 PSAP and a PSAP operating agency's other needs will be considered.

(B) Instant recall recorder may be approved when their use is specific to the support of a 9-1-1 call-taking and call-delivery function.

(C) Paging systems. Funding

for paging systems may be approved when such systems are the most effective means of 9-1-1 call delivery and they do not replace other paging or radio alerting systems. Funding for paging will be limited to systems, where alternative systems or the systems now in use cause significant delay in 9-1-1 call delivery and where existing radio systems can be modified to accommodate paging. Funding for pagers (receivers) will be limited to only those necessary to alert the core responders within an organization (e.g., in a 15-member volunteer emergency medical group, only the on-call ambulance driver and one or two attendants would be furnished pagers).

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 July 29, 1992.

TRD-9210433 Mary A. Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 327-1911

Chapter 252. Administration

• 1 TAC §252.3

The Advisory Commission on State Emergency Communications (ACSEC) proposes new §252.3, concerning 9-1-1 administrative budget document for councils of governments. The Advisory Commission on State Emergency Communications recognizes the importance to councils of governments of administrative budgets to adequately administer the 9-1-1 Program activities in their regions, and is seen as part of the over-all component of the 9-1-1 regional plan process. ACSEC shall review and approve budget requests that justify monies requested.

Mary A. Boyd, executive director, 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.

Ms. Boyd 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 more efficient evaluation and review of councils of governments' budgetary needs necessary to conduct 9-1-1 initiatives, as justified in their requests and according to their regional plans. 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 Mary A. Boyd, Executive Director, 1101

Capitol of Texas Highway South, Suite B-100, Austin, Texas 78746.

The new section is proposed under the Health and Safety Code, Chapter 771, §771.056 and §771.075 which provides Advisory Commission on State Emergency Communications with the authority to provide financial assistance that the Advisory Commission on State Emergency Communications considers appropriate to operate 9-1-1 activities in the regions according to their regional plans.

§252.3. 9-1-1 Administrative Budget Document for Councils of Governments.

(a) The Advisory Commission on State Emergency Communications (ACSEC), through its legislative authority of the Health and Safety Code, Chapter 771 recognizes the importance of the councils of governments (COGs) administration of the 9-1-1 regional plans in their jurisdictions. As a component of the overall regional plan, a COG administrative budget is necessary to administer the provisions of this Act.

(b) The budget cycle for 1993 will be a nine-month period, effective January 1-September 30. Effective October 1, 1993, COG administrative budgets will be approved for a fiscal year period of October 1-September 30.

(c) ACSEC reserves the right to request additional budget documentation from a council of government.

(d) The administrative budget document is adopted by reference, and can be obtained from the Advisory Commission on State Emergency Communications, 1101 Capitol of Texas Highway, South, Suite B-100, Austin, Texas 78746 (512) 327-1911.

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 July 29, 1992

TRD-9210435 Mary A. Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 327-1911

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 7. Pesticides

• 4 TAC §7.10, §7.32

The Texas Department of Agriculture (TDA) proposes amendments to sections §7.10 and §7.32, concerning requirements for the use of

the livestock protection collar. The purpose of the amendments is to integrate the Livestock Protection Collar Applicator Recertification Program into the General Pesticide Applicator Recertification Program, which will result in the reduction of administrative costs to the agency and a reduction in costs to applicators using the collar. In addition to integration of the Livestock Protection Collar Licensing and Recertification Program into the agency's General Recertification Program, the amendments terminate the reporting requirements of the Three-Year Monitoring Program, simplify monthly sales reporting requirements, remove the ceiling on the number of agents authorized to distribute the collars, and allow for collar pool agents.

Murray Walton, predator management and certification/training specialist, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect is an estimated reduction in cost of \$5,000 per year and no estimated loss in revenue. There will be no fiscal implication for local government or for local employment as a result of enforcing or administering the sections.

Mr. Walton 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 savings to the public from a reduction in administrative costs. The effect on small and large businesses will be a reduction of 20% or more in the cost of recertifying their livestock protection collar applicators and a small savings in reporting cost. The anticipated economic cost to persons who are required to comply with the sections as proposed will be a decrease in cost of at least \$2.00 to \$10 per year for the first five years for applicators wishing to use the collar

Comments may be submitted to Steve Bearden, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TDA plans to hold five regional public hearings to receive public comment on the proposed amendments in accordance with the Texas Agriculture Code, §76.004. Notice of these hearings will be published in the *Texas Register*

The amendments are proposed under the Texas Agriculture Code, §76.003, which provides TDA with the authority to regulate the time and conditions of use and purchase and establish recordkeeping requirements for state-limited use pesticides; §76.004, which authorizes TDA to establish rules to carry out Chapter 76; §76.104, which authorizes TDA to adopt rules regarding the manner and method of pesticide application; and §§76.101-76.103 and 76.105-76.113, which provide TDA with the authority to establish requirements for the licensing and certification of pesticide applicators

§7.10. Applicator Recertification.

(a) [Except for licenses issued under §7.32 of this title (relating to Sodium

Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements.) Each [each] commercial, noncommercial, and private applicator must meet certain recertification requirements periodically, including continuing education.

(b)-(p) (No change.)

§7.32. Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar State-Limited-Use Requirements.

(a) (No change.)

(b) Definitions. In addition to the definitions set out in the Texas Agriculture Code, §76.001 (1981), and §7.1 of this title (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(2) (no change)

(3) **Registrant agent [Agent]**—A representative of a registrant. Each registrant agent must be a licensed pesticide dealer, a licensed private, commercial, or noncommercial applicator certified in the livestock protection collar subcategory, and approved by the department to distribute livestock protection collars to approved LPC applicators.

(4) **Collar pool agent**—A person designated by the department to operate a livestock protection collar pool. Each collar pool agent must be a licensed pesticide dealer, a certified private applicator certified in the livestock protection collar subcategory, or a licensed private commercial or noncommercial applicator certified in the livestock protection collar subcategory and approved by the department to distribute livestock protection collars to approved LPC applicators.

(c) Sale or transfer requirements. Registrants, registrant agents, and collar pool agents selling or transferring livestock protection collars must meet the following requirements.

(1) (No change.)

(2) Each registrant and registrant agent who sells or transfers livestock protection collars must obtain a license as a private, commercial, or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Each collar pool agent who sells or transfers livestock protection collars must possess a private applicator certification and obtain certification in the livestock protection collar subcategory or obtain a license as a private, commercial or noncommercial applicator with certification in the livestock protection collar subcategory and a pesticide dealer license. Collars shall be sold or transferred only by registrants or [their]

agents and only to certified livestock protection collar applicators.

(3) (No change.)

(4) Each registrant may designate registrant [have no more than 15] agents and [at any one time. Each registrant] shall file with the department written notice of the name, home address, address of distribution site, and telephone number of each agent. The registrant shall notify the department of any change in this information within 10 days. The department shall notify the registrant in writing if the agent is approved or disapproved.

(5)-(7) (No change.)

(8) [Registrants and agents may sell or transfer livestock protection collars only to LPC applicators for whom a site review and sales data report has been executed for each sale or transfer on a form prescribed by the department.

(9) Registrants and agents shall report to the department any incident or complaints of misuse involving a livestock protection collar.

(d) Certification of LPC applicators.

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

(5) All LPC applicators must recertify [every three years] as required by §7.10 of this title (relating to Applicator Recertification). Each LPC applicator is responsible for giving written notice to the department of any change of address. Government employees who hold a current fee exempt noncommercial license must surrender the license within 30 days of termination of government employment and may convert to a fee paid license if the certification is in force by making application to the department within six months of the termination date. Retraining and retesting may be required by the department for any LPC applicator who fails to comply with the use, recordkeeping, or other requirements of the department.

(e) (No change.)

(f) LPC applicator use restrictions. All LPC applicators shall comply with the label, including the use restrictions, when using the livestock protection collar. Copies of the label and applicator record [reporting] forms shall be obtained with the purchase or transfer of any collar from a registrant or agent. Additional copies of the label and [reporting] forms may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(g) Recordkeeping and reporting.

(1) Each registrant shall maintain records for the registrant and all registrant agents shall maintain records on forms prescribed by the department for at least two years which include:

(A) (No change.)

(B) [the] information on sales or transfers to applicators or agents [required on the department's site review and sales data report in each registrant's records], including:

(i)-(iv) (No change.)

(C) A record of all sales or transfers of collars by a registrant or agent shall be submitted [one copy of each site review and sales data report that is completed by registrant or an agent which shall be submitted by the registrant] to the department monthly. A report is not required for months in which a sale or transfer does not occur.

(2) Each collar pool agent shall notify the department monthly of all sales or transfer of collars and shall maintain records for at least two years, including:

(A) the date of sale, transfer, or receipt of collars;

(B) the name, telephone number, address, and applicator license number of each LPC applicator who purchased, transferred, or received a collar

(C) the number of livestock protection collars sold or transferred;

(D) the serial number of each collar and;

(E) the names and addresses of collar pool members.

(3)[(2)] Each LPC applicator shall maintain [file with the department] records on the use of the collar on forms prescribed by the department [quarterly by the 10th day of January, April, July, and October for each quarter when collars have been issued]. The records shall include:

(A) the serial number of the collar attached to livestock;

(B) the pasture(s) where collared livestock were placed;

(C) the dates of each attachment, inspection, and removal;

(D) the number and location of livestock found with ruptured or punctured collars and the apparent cause of the damage;

(E) the number, dates, and approximate location of collars lost;

(F) the species, locations, and dates of all animals suspected to have been killed by collars;

(G) all suspected poisonings of humans, domestic animals, or nontarget wild animals resulting from collar use and all other accidents involving the release of Compound 1080; and

(H) number of collars in storage.

(4) [(3)] Each LPC applicator shall maintain a copy of collar use records [the reports that are required to be submitted to the department] for at least two years.

(5)[(4)] Each registrant, agent, or LPC applicator shall report accidents involving [a livestock protection collar to the department on forms prescribed by the department within 30 days of the accident. In addition, accidents involving] any suspected or actual poisoning of threatened or endangered species, humans, domestic animals or nontarget wild animals [must be reported] to the department immediately (within one working day) by telephone.

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

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

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

TRD-9210400 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: September 7, 1992

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 61. Boxing

• 16 TAC §61.109

The Texas Department of Licensing and Regulation proposes an amendment to §61.109, concerning technical requirements-boxer, which deletes the HIV test requirement and changes the requirement for EEG for a boxer's first Texas license from mandatory to as may be required.

James D. Brush, director, Policies and Standards Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Brush 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 reduction in the cost of being a licensed boxer, thereby encouraging more boxers to become Texas licensees. The cost of compliance with the section for small businesses will be a decrease in cost of approximately \$35 to \$105 per year for each boxer and a one time decrease in cost of approximately \$45 to \$165 per boxer. The anticipated economic cost to persons who are required to comply with the section as proposed will be a boxer decrease of \$35 to \$105 per year and a boxer one time decrease of \$45 to \$165.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, (512) 463-7357.

The amendment is proposed under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules to assure compliance with and purpose of the Act.

§61.109. Technical Requirements-Boxer.

(a) All boxers applying for a license shall pass a comprehensive medical examination before they can be licensed. The examination consists of a medical history, boxing history, a physical examination, and a report of a negative [HIV and] HBV test. [The results of such test will be provided only to the fighter.] Upon application for the boxer's first Texas license, he may be required to [must also] provide a report of a normal EEG. This examination shall be given by a physician and the physician shall report the examination results on a department-approved form. Out-of-state boxers may get the department comprehensive medical examination form and have it completed by a physician. The examining physician may require tests such as CAT scans, MRI, and EKGs. The boxer and manager are jointly responsible for ensuring this examination is completed.

(b)-(c) (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 July 29, 1992.

TRD-9210359 Jack W. Garrison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 463-3127

Chapter 66. Registration of Property Tax Consultants

• 16 TAC §§66.10, 66.20, 66.81, 66.85

The Texas Department of Licensing and Regulation proposes amendments to §§66.10, 66.20, and 66.81 and new §66.85, concerning the registration of property tax consultants. New §66.85 sets the application fee for a recognized private provider of educational programs or course offerings. Amendments to §§66.10, 66.20, and 66.81 concern the registration of real estate brokers as property tax consultants.

James D. Brush II, director, policies and standards division, has determined that for the first five-year period the sections are in effect there will be an increase in revenue of \$2,400 for fiscal years 1992-1996. There will be no effect on local government. The cost of compliance with the section for small businesses will be \$125 application fee and \$75 per year for recognized private provider fee.

Mr. Brush 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 assure that private provider's educational programs or courses meet program and accreditation standards comparable to public institutions of higher education as determined by the Texas Higher Education Coordinating Board. The effect on small and large businesses will be a \$125 application fee and \$75 per year for recognized private provider fee. 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 James D. Brush II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Austin, Texas 78711, (512) 463-7352.

The amendments and new section are proposed under Texas Civil Statutes, Article 8886, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purposes of the Act.

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

Real estate property tax consultant—An individual who performs property tax consulting services in connection with property that is real property only and who has registered under Texas Civil

Statutes, Article 8886, §2(f) and who on and after February 1, 1995, is employed by or under the supervision of a senior property tax consultant.

§66.20. *Registration Requirements General.*

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

(g) Individuals who are registered under Texas Civil Statutes, Article 8886, §2(f) may not perform property tax consulting services for compensation in connection with a property that is not real property.

§66.81 *Fees-Renewal.*

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

(c) The application for renewing a real estate property tax consultant's registration is \$25 and the registration fee is \$125 for a total of \$150.

(d)[(c)] A late renewal fee of \$50 will be charged for renewal applications postmarked between midnight of the date of expiration and midnight of the 30th day after the expiration. From the 31st day after expiration until one year, an additional \$50 will be charged.

§66.85. *Recognized Private Provider Fee.*

(a) A nonrefundable \$125 application fee shall be paid by an applicant for the designation of recognized private provider.

(b) Applicants for recognized private provider shall pay an annual education provider's fee of \$75 which shall be refunded if the commissioner does not or ceases to recognize the provider's educational program or course offerings.

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 July 24, 1992.

TRD-9210217 Jack W. Garrison
Acting Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 463-3127



TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

- 22 TAC §§213.1-213.3, 213.5, 213.7-213.13, 213.15-213.18, 213.21

The Board of Nurse Examiners proposes amendments to §§213.1-213.3, 213.5, 213.7-213.13, 213.15-213.18, and 213.21, concerning definitions, filing of documents, computation of time, motion for continuance, preliminary notice to respondent, commencement of disciplinary proceedings and filing of charges, respondent's answer, depositions, subpoenas, hearing procedure, decision of board, hearings before executive secretary, prehearing conference, agreed orders, reinstatement hearings, and declaratory order of eligibility for licensure. These amendments are proposed for the purpose of bringing the rules in alignment with the new hearings process through the State Office of Administrative Hearings (SOAH) established by Senate Bill 884.

Glenn Parker, staff services officer, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$45,000 in fiscal year 1993; \$50,000 in 1994; \$55,000 in 1995; \$60,000 in 1996; and \$65,000 in 1997. These numbers represent the estimated net additional cost to the board to have contested cases heard by the SOAH rather than the board. There will be no cost to local government.

Louise Waddill, Ph.D., R.N., executive director, 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 not be applicable as the public is not affected; however, any RN required to appear for a proceeding will have a clearer understanding of the process. There will be no effect on small businesses. There may be anticipated costs to persons who are required to comply with these sections as proposed.

Comments on the proposal may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714. Please submit comments by September 1, 1992.

The amendment is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

ALJ-(administrative law judge)-A person who presides at an administrative hearing held under APTRA.

APTRA [APA]-The Administrative Procedure and Texas Register Act, Texas Revised Civil Statutes, Article 6252-13a.

Contested case"-A case not resolved through the consent or prehearing process.

Declaratory order-An order issued by the board determining the eligibility of an individual for initial licensure as a registered nurse.

Executive director [secretary]-The executive director [secretary] of the Board of Nurse Examiners.

Petitioner-An individual who petitions the board to perform a certain action, i.e., reinstatement of licensure.

SOAH-The State Office of Administrative Hearings.

Staff-The investigative staff of the Board of Nurse Examiners and does not include the executive director [secretary]. For purposes of these rules, the staff may act through the legal counsel to the board.

§213.2. *Filing of Documents.* All applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the administrative law judge [board] shall be filed with the executive director [secretary]. They shall be deemed filed only when actually received.

§213.3. *Computation of Time.*

(a) (No change.)

(b) Extension. Unless otherwise provided by statute, the time for filing any pleading, motion, or request may be extended by order of the executive director [secretary], upon written motion filed prior to the expiration of the applicable period of time for the filing of the same, showing that the need for extension is not caused by the neglect, indifference, or lack of diligence of the requesting party.

§213.5. *Motion for Continuance.*

(a) A [One] continuance may be granted by the executive director [secretary] upon the filing of a written motion and affidavit complying with the requirements of subsection (b) of this section; provided, however, that no motion for continuance shall be granted by the executive director [secretary] unless filed at least three [five] days prior to the [board] hearing[.] before administrative law judge an administrative law judge (ALJ).

(b) The motion shall be supported by a sworn affidavit detailing the reasons for the continuance. If the ground of such

application be the want of testimony, the party requesting the continuance [respondent] shall make affidavit that such testimony is material, showing the materiality thereof, and that he or she has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, if it be for the absence of a witness, the party requesting the continuance [respondent] shall state the name and residence of the witness, and what the party requesting the continuance [respondent] expects to prove by such witness. The affidavit shall also state the continuance is not sought for delay only, but that justice may be done.

§213.7. Preliminary Notice to Respondent.

(a) (No change.)

(b) Such notice shall contain a statement of the alleged complaint against the respondent and a statement that the respondent has 10 days from the date the notice is served to provide the staff with a written response to the complaint, together with any other written information showing mitigating circumstances or the respondent's compliance with the Act and the rules, regulations, and orders of the board.

§213.8. Commencement of Disciplinary Proceedings and Filing of Charges.

(a) The staff may commence disciplinary proceedings [before the board] by filing written charges.

(b) (No change.)

(c) When the charges are filed, the executive director [secretary] shall serve the respondent with a copy of the charges and with a notice of prehearing conference or notice of hearing which shall state the date, time, and location of the hearing at which [the board will consider] the charges[.] will be considered. The notice of prehearing conference or notice of hearing shall also state that the respondent may file a written answer to the charges meeting the requirement of §213.9 of this title (relating to Respondent's Answer) within 10 days of receiving the charges. In addition, the executive director [secretary] shall enclose with the charges a copy of the rules governing disciplinary proceedings.

(d) The staff may amend the charges at any time; provided, however, that no amendment of the charges shall be effective if filed within 10 [15] days of the hearing unless consented to by the respondent or approved by the executive director [secretary]. A copy of the amended charges shall be served on the respondent. The first charges filed shall be entitled "charges," the first amended charges filed shall be entitled "first amended charges," and so forth.

§213.9. Respondent's Answer.

(a) (No change.)

(b) If an answer is filed by respondent, it shall be filed within 10 days of receiving the charges or any amended charges provided [, however, no answer shall be filed less than five days prior to the hearing unless consented to by the staff or approved by the executive secretary].

(c)-(f) (No change.)

§213.10. Depositions.

(a) The deposition of any witness may be taken upon a commission issued by the executive director [secretary] upon the written request of the staff or the respondent, a copy of which shall be served on the nonrequesting party.

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

§213.11. Subpoenas.

(a) Upon the oral or written request of the staff or the respondent, the executive director [secretary] may issue a subpoena to require the attendance of witnesses or the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) (No change.)

(c) Upon a finding that the respondent or staff has shown good cause for the issuance of the subpoena, the executive director [secretary] shall issue the subpoena in the form described in the APTRA [APA] §14(c).

(d) Notwithstanding any other provisions of these sections, the executive director [secretary] may issue a subpoena prior to the filing of charges under §213.8 of this title (relating to Commencement of Disciplinary Procedures and Filing of Charges) if, in the opinion of the executive director [secretary], such subpoena is necessary to investigate any potential violation or lack of compliance with Texas Civil Statutes, Articles 4513-4518, or the rules, regulations, or orders of the board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

§213.12. Hearing Procedure.

(a) Administrative hearings. The State Office of Administrative Hearings (SOAH) shall conduct all administrative hearings in contested cases under APTRA that are before the board.

[(a) Call of docket. At the beginning of the session of the board meeting

during which disciplinary hearings have been scheduled, the president will call the docket of the cases. As each case is called, the staff and the respondent will each announce whether they are ready to proceed with the hearing. After the docket is called, the president will announce the order in which the cases will be heard.

[(b) Reading of charges. At the beginning of each hearing, the staff will read the charges and offer for inclusion in the record the charges, the copy of the notice of hearing, and the copy of the transmittal letter by which the charges and notice of hearing were sent to the respondent.

[(c) Opening statement of respondent. After the charges have been read and offered for the record, the respondent may make an opening statement responding to the allegations in the charges.

[(d) Presentation of evidence.

[(1) The staff will present evidence to support the allegations in the charges provided, however, the staff shall have the right not to present evidence if the allegations in the charges are admitted.

[(2) The respondent shall have the right to cross-examine witnesses presented by the staff and the board shall have the right to examine the staff's witnesses.

[(3) At the conclusion of the staff's evidence, the respondent may present his or her evidence. The staff shall have the right to cross-examine the witnesses presented by the respondent and the board shall have the right to examine the respondent's witnesses. In addition, the board and staff shall have the right to examine the respondent but the respondent may decline to answer any question asked by the board or staff.

[(4) At the conclusion of the respondent's evidence, the staff may present additional evidence to rebut evidence presented by the respondent.

[(5) The board may establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

[(e) Evidentiary rulings. All rulings on the admissibility of evidence shall be made by the president and such ruling shall be governed by the Administrative Procedures Act.

[(f) Closing statement of staff and respondent. At the conclusion of all the evidence, the respondent may make a closing statement. After the respondent's statement, if any, the staff may make a closing statement.]

[(b)[(g)] Transcription of hearing. Each hearing will be recorded by a court reporter. No transcription of a hearing shall

be made except on written request to the executive director [secretary].

(1) The cost of the transcription shall be borne by the person making the request.

(2) A party who appeals a final decision of the board shall pay all of the cost of preparation of the original and any certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

§213.13. Decision of Board.

(a) Based on the evidence presented at the hearing before the administrative law judge (ALJ) and the proposal for decision submitted by the ALJ, the board may:

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

(7) limit the practice of professional nursing;

(8)-(11) (No change.)

(b) The decision of the board shall be in writing in the form of an order and shall be signed by the executive director [secretary].

(c) A copy of the order shall be mailed or delivered to the respondent, the respondent's last known employer as a professional nurse, and the respondent's attorney [the respondent's attorney and the respondent's last known employer as a professional nurse].

(d)-(e) (No change.)

§213.15. Hearings before Executive Director [Secretary].

(a) A hearing before the executive director [secretary] or his/her designate may be conducted after the filing of a complaint but before formal charges are filed.

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

(d) If the complaint is not resolved at this hearing, or if the board votes to reject the proposed consent order, then the board has the right to file charges and institute a formal [hearing] disciplinary proceeding pursuant to §213.8 of this title (relating to Commencement of Disciplinary Proceedings and Filing of Charges) governing the same matter.

§213.16. Prehearing Conference.

(a) Prehearing conferences may be conducted [after the filing of formal charges, but] prior to a hearing before an administrative law judge [formal board hearing. Informal disposition may be made of the prehearing conference by agreed order. The board shall present its evidence substantiating the allegations, and the nurse

may present evidence by correspondence or appearance at the prehearing conference, in an effort to bring about an adjustment and equitable solution to the matter without a formal hearing before the board.] The executive director [secretary], unilaterally or at the request of the staff or respondent, may direct the parties, their attorneys or representatives to appear before the executive director [secretary] at a specified time and place for a conference prior to the hearing for the purpose of:

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

(b) Informal disposition of the matter may be made at the prehearing conference by agreed order. In the case of an agreed order, action taken at the conference shall be recorded in an appropriate order by the executive director [secretary].

§213.17. Agreed Orders. Whether or not proceedings have been commenced under §213.8 of this title (relating to Commencement of Disciplinary Proceedings and Filing of Charges) or there is a prehearing conference under §213.16 of this title (relating to Prehearing Conference), the executive director [secretary] may, at any time, enter into an agreed order with any person containing such terms and conditions as the executive director [secretary] may deem reasonable and necessary. Said agreed orders shall not be final and effective until the board members, at a scheduled board meeting, vote to accept the proposed agreed order. If the matter [charge(s)] is not resolved at the prehearing conference, or if the board votes to reject the proposed agreed order, [then the board has the right to institute] a formal hearing governing the same matter may be requested before an administrative law judge (ALJ).

§213.18. Reinstatement Process [Hearing].

(a) (No change.)

(b) The petition shall be in writing and in the form prescribed by the board. The petition and any documentation regarding the petition shall be submitted to the office of the Board of Nurse Examiners at least three weeks prior to the regularly scheduled prehearing conference [meeting at which the petition is to be heard]. The petitioner [applicant] will be notified by mail of the time and place of the conference [reinstatement hearing].

(c) The petitioner must attend a prehearing conference in accordance with §213.16 of this title (relating to Prehearing Conference).

(d)[(c) Upon investigation and hearing, the board may in its discretion, grant or deny the petitioner's request to reinstate the license.] The burden of proof is on the petitioner [applicant] to prove [to

the satisfaction of the board] that the condition [condition(s)] that led to the revocation no longer exists and/or no longer has a bearing on the petitioner's [applicant's] professional ability. If [the board grants] reinstatement[,] is granted, [the board may impose] reasonable terms and stipulations may be imposed. [to be satisfied prior to reinstatement or as stipulations of reinstatement. If the board denies reinstatement, written reasons for denial shall be communicated to the applicant.]

(e) If the petition for reinstatement is not resolved at the prehearing conference, the petitioner may request a hearing before an administrative law judge (ALJ).

(f) A petitioner whose petition for reinstatement has been denied by an ALJ and ratified by the board will not be considered for reinstatement for one year from the date of denial of the prior petition.

(g) In considering reinstatement of a revoked license, the board will evaluate:

(1) the severity of the act which resulted in revocation of the license:

(2) the conduct of the petitioner subsequent to the revocation of license:

(3) the lapse of time since revocation:

(4) the degree of compliance with all conditions the board may have stipulated as a prerequisite for reinstatement:

(5) the degree of rehabilitation attained by the petitioner as evidence by sworn notarized statements sent directly to the board from qualified people who have personal and professional knowledge of the petitioner; and

(6) the petitioner's present qualification to practice professional nursing based on his/her history of nursing related employment or education.

§213.21. Declaratory Order of Eligibility for Licensure.

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

(e) If the board proposes to find the petitioning individual ineligible for licensure, he/she is entitled to a prehearing conference or a hearing before an administrative law judge [in accordance with Texas Civil Statutes, Article 4525(b) as amended].

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt

Issued in Austin, Texas, on July 31, 1992

TRD-9210504 Louise Waddill, Ph D., R N
Executive Director
Board of Nurse Examiners

Proposed date of adoption September 22, 1992

For further information, please call: (512) 835-8650

Part XIII. Texas Board of Licensure for Nursing Home Administrators

Chapter 243. Application

• 22 TAC §§243.1-243.3

(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 Board of Licensure for Nursing Home Administrators or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Licensure for Nursing Home Administrators proposes the repeal of §§243.1-243.3, concerning application procedures for prospective nursing home administrators. This chapter does not adequately describe the internal practices, procedures, and requirements used by TBLNHA staff to process applications.

Gerard Swain, acting executive director, 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. Swain 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 repeals will be that current rules do not insure fair and uniform processing of all applications. 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 Gerard Swain, TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756.

The repeals are proposed under Texas Civil Statutes, Article 442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code 1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§243.1. Application Procedures.

§243.2 Administrators-In-Training.

§243.3. Preceptorial Qualifications and Control.

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 July 29, 1992.

TRD-9210483 Gerard Swain
Acting Executive Director
Texas Board of Licensure
for Nursing Home
Administrators

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 458-1955

• 22 TAC §§243.1-243.5

The Texas Board of Licensure for Nursing Home Administrators proposes new §§243.1-243.5, concerning application procedures for prospective nursing home administrators. This chapter does not adequately describe the internal practices, procedures, and requirements used by TBLNHA staff to process applications. These rules clarify these procedures, allow for criminal background checks of applications, allow for no waiver of internship hours, clarify requirements of AIT (Administrator in Training) training and clarify requirements for preceptors.

Gerard Swain, acting executive director, 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. Swain 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 that it ensures fair and uniform processing of all applications. The new rules clearly specify requirements for licensure. 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 Gerard Swain, TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756.

The new sections are proposed under Texas Civil Statutes, Article 442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code 1396g), the federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§243.1. Application Procedures.

(a) Application for licensure may be obtained at the offices of TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756. On forms provided by the agency, an applicant for examination and qualification for a nursing home administrator's license will complete and submit the following information:

(1) an application for nursing home administrator's license;

(2) an application for examination;

(3) personal data information;

(4) a non-refundable application/testing fee as set by the legislature payable by certified funds only (cashier's check or money order);

(5) a college transcript sent directly from the applicant's college to the agency;

(6) internship plan and calendars (if serving internship through the board), and

(7) an applicant who has completed college level course work outside of the United States is responsible for having the foreign transcript evaluated and converted to semester or quarter hours recognized by United States colleges.

(b) Each applicant must answer all questions fully and precisely. Insufficient answers may be grounds for denial of application (see §243.2 of this title (relating to Denial of Application)). All answers must be typed or printed in indelible ink, and notarized where indicated. Any misrepresentation, deceit, or material misstatements of fact in this application may cause revocation, suspension, or disqualification of this application for licensure as a nursing home administrator.

(c) Upon TBLNHA's receipt of an application, applicant becomes subject to a criminal background investigation. Failure to acknowledge prior convictions for other than minor traffic violations, will result in denial of application. Any person convicted of a crime may present their case to the board and prove they have been rehabilitated in accordance with Texas Revised Civil Statutes Article 6252-13(c).

(d) A complete application must be on file prior to taking the state and comprehensive examinations. Complete applications must be received by TBLNHA seven days prior to the examination date. No exceptions will be made.

(e) Applicants who are currently licensed in another state and are requesting partial endorsement:

(1) must comply with education requirements as listed in §247.2 of this title (relating to Minimum Requirements). Without a bachelor's degree, there must be no lapse in licensure;

(2) must be licensed and in good standing, as defined by the original State of licensure, for one year or more as a nursing home administrator and must be the administrator of record for at least one year; these requirements may be served in conjunction with one another; or if applicant has not been licensed for a minimum of one year, applicant must provide evidence of an approved six month or 520 hour internship served in another state;

(3) must have all states in which a license was previously held submit a certification of tenure, test results, education, disciplinary history, and current status even if the license is inactive or expired;

(4) must make application on forms provided by the agency as referenced in subsection (a) of this section;

(5) must have passing NAB or PES test scores verified by the state(s) for which applicant has been previously licensed which may be accepted in lieu of the comprehensive examination as certified by the state that administered the test. All applicants must take the State Standards examination;

(6) temporary license may be issued upon receipt and approval of a complete application and will be in effect for two weeks beyond the next scheduled examination. If a passing score is not achieved, the temporary license expires. If applicant is unable to be present for the exam, the temporary license may be extended upon suitable documentation of the following: death in immediate family, natural disaster, or medical emergency. Otherwise temporary license will expire. There will be no exceptions.

(f) Upon TBLNHA's receipt of a complete application, the application remains valid for one year. If the applicant allows his or her file to remain inactive for one year or more, the application becomes null and void and the applicant will be required to register as a new applicant and meet the application requirements that exist at such time. A written request for extension will renew the application for one year from the date of receipt. Only one renewal for a term of one year will be granted.

§243.2. Denial of Application.

(a) Upon receipt of an application, TBLNHA staff will review and evaluate documents submitted for eligibility for licensure. If an application is deemed unacceptable, applicant will receive written notification of deficiencies and will be

given the opportunity to correct deficiencies by working with TBLNHA staff.

(b) If the application remains unsatisfactory, applicant may exercise his/her right to petition the decision according to the procedures outlined in Chapter 251, concerning disciplinary process.

§243.3. Waivers.

(a) Upon review of an applicant's official college transcripts, TBLNHA staff will evaluate and recommend to the education committee any additional education needed and applicant will be informed in writing of the education committee's decision.

(b) There will be no waiver of internship hours.

§243.4. Administrators-in-Training.

(a) An individual under the auspices of an approved college is bound by college rules. Individuals who are receiving their internship training through a college shall indicate the college of enrollment and anticipated completion date on the internship plan form.

(b) An "administrator in training" (AIT) will follow the application procedures outlined in §243.1(a) of this title (relating to Application Procedures). The AIT must submit the internship plan form and calendars provided by the agency. Calendars must specify hours under direct supervision of the preceptor; daily topics covered; and number of hours served per day.

(c) AIT training may begin upon receipt of a letter of notice by the agency that a complete application along with a complete internship plan is on file. See §243.2 of this title (relating to Denial of Application).

(d) Each administrator-in-training will receive supervision from a preceptor certified by the board.

(e) Training requirements and procedures.

(1) Administrators-in-training will serve an internship for a minimum period of 520 hours in a nursing home licensed by the Texas Department of Health for 60 beds or more and participating in Medicaid programs as a nursing facility.

(2) Eighty percent of training must be conducted between the hours of 6 a.m. and 9 p.m., Monday-Sunday. AITs may not train for less than two or more than six hours per training day, no more than 20 hours per week.

(3) The preceptor will provide direct supervision a minimum of four planned hours per every 20 hours of train-

ing conducted at the facility where the AIT(s) is training.

(4) Any absence of an AIT shall be made up at the end of the internship.

(f) Preceptors will forward attendance calendars to the agency at the conclusion of each month of training if 20 hours or more of training have been completed. When less than 20 hours of training is conducted during the month, attendance calendars will be submitted when the 20 hour training threshold is reached.

(g) The board must be notified by the preceptor in writing within 10 working days from the date of the change if the AIT leaves the program, there is a change of preceptor, a change in the training plan, or any change in the amount or kind of training provided.

(h) If the internship training program is interrupted for any reason, the AIT will have a period of one year from the date of filing the last performance evaluation report to resume training, otherwise the application becomes null and void and the AIT will be required to register as a new applicant and meet the application requirements that exist at such time. A written request for extension will renew the application for one year from the date of receipt.

(i) AITs may not serve their training in a facility which is currently decertified for medicaid participation. Upon decertification, AIT training must be suspended and reinitiated in a certified facility. Appropriate TBLNHA forms must be submitted before reinitiating the internship.

§243.5. Preceptorial Qualifications and Procedures.

(a) All persons desiring to serve as preceptors must:

(1) have an active Nursing Home Administrator's license;

(2) attend a preceptor seminar conducted by TBLNHA;

(3) be certified by TBLNHA.

(b) Eligibility requirements.

(1) An administrator with less than a bachelor's degree desiring to become a preceptor must have at least three years' experience as a licensed nursing home administrator in the State of Texas.

(2) An administrator with a bachelor's degree or higher educational achievement desiring to become a preceptor must have at least two years' experience as a licensed nursing home administrator in the State of Texas.

(3) If such administrator has obtained a license in Texas through partial

endorsement, that administrator must have three years' experience as a licensed nursing home administrator with the most recent year in this state.

(c) Preceptor denial.

(1) The board may refuse to certify preceptors for training AITs if there is good cause to believe that the preceptor has failed to provide proper training for AITs previously assigned to him or her.

(2) Repeated allegations lodged with this board against a nursing home administrator, including decertification for medicaid participation, may be grounds for refusal to grant approval to be a preceptor, or approve AITs serving under that preceptor unless such allegations have been resolved to the satisfaction of the board.

(d) AIT training must be conducted in one facility by one preceptor at a time. No person may serve as a preceptor for more than one AIT at any given time.

(e) No person shall be precepted/trained by any relative who is related within the second degree by affinity or within the third degree by consanguinity

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 July 29, 1992.

TRD-9210484 Gerard Swain
Acting Executive Director
Texas Board of Licensure
for Nursing Home
Administrators

Earliest possible date of adoption: September 7, 1992

For further information, please call. (512) 458-1955

◆ ◆ ◆
Chapter 253. Public Comment

• 22 TAC §253.1, §253.2

The Texas Board of Licensure for Nursing Home Administrators proposes new §253.1 and §253.2, concerning public hearing policies and procedures. The new sections set policies and procedures for public comment at public hearings on rulemaking, committee, and board meetings.

Gerard Swain, acting executive director, 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. Swain 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 the proposed policies for public comment will enable all citizens a fair and equal opportunity to present information and opinions to the board in an orderly 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 Gerard Swain, TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756.

The new sections are proposed under Texas Civil Statutes, Article 442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code, §1396g), the federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§253.1. *Public Hearing Policies and Procedures.* Any interested person may appear and offer comments or statements, either orally or in writing, however, questioning of commenters will be reserved exclusively to the Texas Board of Licensure for Nursing Home Administrators (TBLNHA) or its staff as may be necessary to ensure a complete record. Whole any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the TBLNHA or its staff reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments, through a representative member where possible.

§253.2. *Committee and Board Meetings.* All persons attending a committee or board meeting must complete an attendance list. Those attending, who wish to give public comment on the committee's or board's proposed action, must complete an information sheet stating which item or items on the agenda they would like to address. Any public comments should be kept to five minutes or less per item. The committee or board reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments, through a representative member where possible.

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 July 29, 1992.

TRD-9210482 Gerard Swain
Acting Executive Director
Texas Board of Licensure
for Nursing Home
Administrators

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 458-1955

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Food Service Sanitation

• 25 TAC §229.172

The Texas Department of Health (department) proposes an amendment to §229.172, concerning "Accrediting Education and Training Programs for Food Service Workers." In order to clarify intent of the rule, and conform to the December 10, 1991 Report from the Ad-Hoc Committee on Training, Testing and Certification, the title has been changed to "Accreditation of Food Protection Management Programs." The word "worker" has been replaced throughout with "manager" to more precisely define the program target population. Administrative procedures and requirements governing accreditation, course examinations and department audits are delineated. The 72nd Texas Legislature authorized the department to establish provisions for the recertification of individuals previously certified under the certification program. The proposed amendment to §229.172 establishes criteria and procedures for the accreditation of recertification programs in Texas. The proposed amendment to §229.172 will allow the department to discharge its accreditation and auditing duties more efficiently by standardizing educational and administrative program requirements. The proposed auditing procedure revisions facilitate department compliance with the rules. An application fee for accreditation of certification programs will be instituted to offset program costs.

Dennis Baker, director, division of food and drugs, has determined that for the first five-year period the section will be in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government will be an estimated additional cost of \$12, 945 for FY 1993; \$42,041 for FY 1994; and \$35,486 for each year of fiscal years 1995-1997. However, there will be an estimated increase in revenue of \$63,500 for FY 1993; \$86,500 for FY 1994; \$92,600 for FY 1995; \$98,700 for FY 1996; and \$104,800 for FY 1997. There will be no effect on local government.

Mr. Baker also has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated will be uniformity of training which will minimize duplication of services and more clearly define course criteria requirements. Foodservice workers and managers will be better trained resulting in safer food for the public. The possible annual cost to small businesses and persons required to comply

with the proposed section will be set forth in the schedule of fees in §229.172(k). There will be no effect on local employment.

Comments on the proposed section may be submitted to Mr. Dennis Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. (Telephone: (512) 458-7248). Comments will be accepted for 30 days following the date of publication of these proposed rules in the *Texas Register*. In addition, a public hearing on the proposed rules will be held in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, on August 20, 1992, beginning at 2 p.m.

The amendment is proposed under the Texas Health and Safety Code, Subchapter D, §438, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§229.172. [Accrediting] Accreditation of [Education and Training Programs for Food Service Workers] Food Protection Management Programs

(a) Intent and scope. This section is intended to provide a framework for accrediting manager-level training programs in food service sanitation, in compliance with Chapter 438, Subchapter D, of the Texas Health and Safety Code. [uniformity of training criteria within the food service industry.] A uniform standard governing the accreditation of sanitation training programs enhances the recognition of reciprocity among regulatory agencies and reduces the duplication and expense of retraining incurred when food service managers cross regulatory jurisdictions. Education of the food service [worker] manager provides better qualified personnel, [therefore] thereby reducing the risk of [causing] foodborne illness outbreaks caused by improper food handling and preparation techniques. [The mutual acceptance of uniform sanitation training standards by regulatory agencies is necessary to eliminate duplication and added expense for food service establishment workers who move from one regulatory jurisdiction to another.]

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

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

(6) Food protection management program—A program accredited by the Texas Department of Health (department) which trains and certifies food service managers.

(A) Certification program—A program whose coursework con-

sists of a minimum of 14 hours of classroom instruction and a one hour examination meeting the requirements of the Health and Safety Code, Chapter 438, Subchapter D.

(B) Recertification program—A program whose coursework consists of a minimum of six hours of classroom instruction on food safety and sanitation and a final examination as defined by the department.

(7)[(6)] Food service establishment—Any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

(8)[(7)] Food service [worker] manager—An [employee, owner, manager, supervisor, or any other person working in a food service establishment] individual who:

(A) is responsible for identifying hazards in the day-to-day operation of a food preparation, service, or dispensing facility;

(B) develops or implements specific policies, procedures, or standards aimed at preventing foodborne illness;

(C) coordinates training, supervises, or directs food preparation activities and takes corrective action as needed to protect the health of the consumer; and

(D) conducts in-house self-inspection of daily operations on a periodic basis to see that policies and procedures concerning food safety are being followed.

[(8)] Independent testing organization—A privately funded legal entity capable of administering a food service worker final examination determined by the commissioner of health, or his agent, to be content valid, securely monitored, and legally reliable.]

(9) Instructor—[A person skilled in presenting established public health principles in food service sanitation and having demonstrated knowledge and understanding of §§229 161-229.171 of this title (relating

to Food Service Sanitation) and §§229.231-229.239 of this title (relating to Retail Food Store Sanitation).] An individual whose educational background and work experience meet the requirements for instructor as outlined in this section.

(10) Law—Any[includes] federal, state, and local statutes, ordinances, and regulations.

(11) Person—An[includes] individual, partnership, corporation, association, or other legal entity.

(12) Proctor—An authorized agent of the Texas Department of Health; a course sponsor or instructor; local health department personnel; or authorized community college or university personnel.

(13)[(12)] Regulatory authority—The state and/or local enforcement authority, or authorities, having jurisdiction over the food service establishment, or those determined by the commissioner of health as having jurisdiction

(14)[(13)] Retail food store—Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, nonpotentially hazardous foods, roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments; farmers markets; or food and beverage vending machines as defined in the Vending of Food and Beverages, 1978, Department of Health, Education and Welfare Publication Number (FDA) 78-2091.

(15) Secure—Access limited to a proctor.

(c) Requirements [Application] for accreditation of food protection management programs. All programs must meet the program requirements of the Texas Health and Safety Code, Chapter 438, Subchapter D. [Any person] Persons sponsoring [a food service training program] programs utilizing the state instructor's guide and final examinations shall file an application with the department. Persons wishing to develop their own course guides shall submit: [outlining the course syllabus. All persons must meet the program requirements of Texas Civil Statutes, Article 4476-10b. This application shall include the time frame of each subject area, the total time in course hours, a copy of the instructors final examination, plus any additional sanitation quizzes used during the course of instruction.]

(1) an application,

(2) an independently-developed course guide including:

(A) a detailed summary of each topic and subtopic area;

(B) a time allotment for each topic and sub-topic totaling:

(i) 14 hours for certification; and

(ii) 6 hours for recertification;

(C) a copy of all written teaching materials, pamphlets and hand-outs;

(D) a list of all texts used; and

(E) a list of all audio-visual aids used, describing their content, duration, and location in the program; and

(3) documentation of the use of a national examination or special foreign language examination meeting Food Protection Management Program examination criteria.

[(d) Accreditation of programs.

[(1) The department shall issue provisional accreditation to a program applicant pending an on-site test audit by either an authorized agent of the department or an independent testing organization. The independent testing organization shall be selected through a competitive bidding process. Test development for contract purchase by the department shall be determined through a competitive bidding process. On-site test auditing of trainee candidates shall be randomly and uniformly conducted throughout the training year based on the following sample sizes:

[Total Number of Candidates Trained During the Year	Total Number of Candidates to be Test Audited During the Year
50	30
75	38
100	43
150	50
175	53
200	55
250	58
300	60
400	63
500	65
750	68
1000	70
1200	71
1500	71]

[(2) The department shall maintain pass/fail ratios of each training program tested. To preclude duplication of testing, a course sponsor may elect to substitute the on-site test auditing procedure for the regular final examination.]

(d) Course examinations. The department shall supply an English language final examination on a bi-annual basis to course sponsors utilizing the state examination. Course sponsors shall be responsible for the security of the state examinations.

(1) The course examination shall be multiple-choice (A,B,C,D) and shall:

(A) contain 75 questions for certification; or

(B) contain 50 questions for recertification.

(2) A candidate passing score shall be 75% or above.

(3) The final examination score or status (incomplete, withdrawal, or retake) of each candidate enrolled in a class shall be submitted to the department on a class roster.

(4) The examination shall be maintained under secure conditions and administered by an approved proctor.

(5) There shall be one proctor for every 35 students taking the examination.

(6) An individual who speaks English as a secondary language may use a dictionary during examinations to translate English into the native language.

(e) Retake examinations. Course sponsors may set their retake policy in the event a candidate fails the final examination.

(f) Student identification. The sponsor shall confirm by photo ID the identity of a candidate at the time of the final examination. A candidate's Food Protection Management certificate shall not be issued until such time as a valid photo ID has been presented to a proctor.

(g) Instructor qualifications. The Food Protection Management Program course shall be taught by a department-approved instructor. As a minimum all instructors shall:

(1) have successfully completed a Food Protection Management Certification Program as evidenced by a valid certificate;

(2) possess a high school diploma or its equivalent; and

(A) have worked a minimum of one year inspecting food service establishments; or

(B) have worked a minimum of five years in the food service industry; or

(3) possess an associate's degree or bachelor's degree from an accredited institution; and

(4) provide evidence of attendance of at least one seven-hour training seminar on food safety and sanitation topics every three years following employment as an instructor.

(h) Course scheduling. The course sponsor shall submit in writing to the Department, a bi-annual course schedule. The schedule shall include class times, dates, locations, size, and instructor name. The department shall be notified by telephone or FAX of any changes in previously submitted course schedules at least 24 hours before the initiation of any class.

(i) [(f)] Food protection management program accreditation certificate. The department shall issue a certificate of accreditation to each course sponsor who has demonstrated compliance with this section. A certificate issued under this rule expires one year from the date of issuance.

(j) Food protection management program [training] candidate certificates. [A] Food Protection Management Program candidate [training] certificates [certificate] issued by the Department and [an] accredited course sponsors [sponsor] shall be valid for a period of three years from date of issuance. Local regulatory authorities shall recognize state-issued Food Protection Management Program candidate certificates as the only valid proof of successful completion of training.

(k)[(g)] Program and candidate fees.[Fees for accreditation. Each training program applicant shall file a written report quarterly with the department and shall pay a fee of \$5.00 per candidate trained for the preceding three month period.] All fees are nonrefundable and payable to the Texas Department of Health.[due on the first day of January, April, July, and October of each calendar year.] Fees shall be:

(1) \$150 for an initial application for a Food Protection Management Program;

(2) \$100 for an annual renewal fee for a Food Protection Management Program; and

(3) \$7. 00 per candidate enrolled for the preceding three months:

(A) the candidate fees are due on the first day of January, April, July, and October of each calendar year; and

(B) considered delinquent if not received within 45 days after the due date.

(l)[(e)] Publication of a [course] program registry. The department shall maintain and publish a current [course] program registry. The registry shall be circulated statewide on a quarterly basis to community colleges, local health departments, public health regions and industry training groups. [Courses listed in the registry shall reflect either a percentage (%) pass/fail ratio, or provisional status. Courses with a test audit pass/fail ratio of less than 75% shall not be listed in the registry.]

(m) Department audits. Examination and classroom audits shall be conducted on an announced and unannounced basis to assess program compliance. Audits will be determined from, but not limited to, course schedules and quarterly examination results submitted by course sponsors.

(n) [(h)] Revocation of accreditation. The following items are just cause for program review and/or revocation of a certificate of accreditation:

(1) a quarterly candidate failure rate of 26% or higher on course sponsor examinations;

(2) a mean class score of less than 75% on a state audit examination;

(3) failure to notify the department of course schedules and/or scheduling changes;

(4) a sponsor that is delinquent in payment by more than [10] 45 days; [is subject to forfeiture of their accreditation certificate or may be removed from the course registry, or both.]

(5) a sponsor that knowingly files a false accounting report, or fails to pay the appropriate fee, as determined through an audit by an agent of the department[, shall not be listed in the course registry and shall forfeit their certificate of accreditation.]; and

(6) a sponsor that compromises a secure examination, or fails to comply with or adhere to the rules regulating the Food Protection Management Program.

(o)[(i)] Revocation procedures. Revocation procedures under this section shall be conducted in accordance with 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 the Board of Health)[§§1.21-1.33 of this title (relating to Formal Hearing Procedures)].

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 August 3, 1992.

TRD-9210535

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

Proposed date of adoption: October 24, 1992

For further information, please call: (512) 458-7248

Registration of Manufacturers of Food-Including Good Manufacturing Practices

• 25 TAC §229.182

The Texas Department of Health (department) proposes an amendment to §229.182, concerning registration of manufacturers of food-including good manufacturing practices. Section 229.182 establishes registration requirements and procedures for all manufacturers of food. In addition, §229.182 enumerates those entities which are exempt from registration requirements. The proposed amendment will restructure the gross annual volume dollar amounts of food products manufactured at an establishment that are used to determine the registration fee. The proposed amendments will also increase certain registration fees based on the restructured gross annual volume dollar amounts. The proposed amendment will enable the department to license and regulate manufacturers of food so as to ensure compliance with the United States Food and Drug Administration regulations titled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food." The increased fees will enable the department to conduct needed inspections of manufacturers of food. Under the current fee structure, the department is able to conduct only 2,877 inspections per

year. The increase in fees would result in 4,712 inspections a year, enabling the department to inspect all high priority establishments at least once a year. This would also enable the Department to identify unknown firms, to follow up on the firms that are delinquent in fee payment, and to audit the firms that are not paying the appropriate fee based on the gross annual volume of earnings for food production. This should, in turn, result in a further increase in inspections by providing additional funds for additional manpower.

Dennis Baker, director, Division of Food and Drugs, has determined that for the first five-year period the section will be in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government will be an estimated additional cost of \$514,000 for each year of fiscal years 1992-1996. However, there will be an estimated increase in revenue of \$514,000 for each year of fiscal years 1992-1996 to offset those costs. There will be no effect on local government.

Mr. Baker also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated will be an increase in the surveillance of food manufacturers and a decrease in potential foodborne illnesses. The possible annual cost to small businesses and individuals required to comply with the proposed rules for the next five years will be as set forth in the schedule of fees in §229.172(a)(1). There will be no effect on local employment.

Comments on the proposed section may be submitted to Mr. Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. (Telephone: (512) 458-7248). Comments will be accepted for 30 days following the date of publication of the proposed section in the Texas Register. In addition, a public hearing on the proposed section will be held in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, Texas on Thursday, August 20, 1992, beginning at 9 a.m.

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

§229.182. Registration Fee and Procedures.

(a) Registration fee and exemptions.

(1) All manufacturers of food in Texas shall register annually on or before September 1 with the Texas Department of Health and shall pay registration fees as follows:

(A) \$25 per establishment having a gross annual volume of \$0.00-

\$9,999.99 [\$24, 999.99] for food products manufactured at that establishment;

(B) \$50 per establishment having a gross annual volume of \$10,000-\$24,999.99 [\$25, 000-\$99,999.99] for food products manufactured at that establishment;

(C) \$100 per establishment having a gross annual volume of \$25,000-\$99,999.99 [\$100,000-\$199,999.99] for food products manufactured at that establishment;

(D) \$250 [\$200] per establishment having a gross annual volume of \$100, 000-\$199,999.99 [\$200,000-\$999,999.99] for food products manufactured at that establishment;

(E) \$400 [\$300] per establishment having a gross annual volume of \$200,000-\$999,999.99 [\$1,000,000-\$2,999,999.99 or more] for food products manufactured at that establishment;

(F) \$500 [\$400] per establishment having a gross annual volume of \$1,000,000-\$9,999,999.99 [\$3,000, 000-\$4,999,999.99] for food products manufactured at that establishment; and

(G) \$750 [\$500] per establishment having a gross annual volume of \$10, 000,000 [\$5,000,000] or more for food manufactured at that establishment.

(2) (No change.)

(b)-(g) (No change.)

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

Issued in Austin, Texas, on August 3, 1992.

TRD-9210536

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

Proposed date of adoption: October 24, 1992

For further information, please call: (512) 458-7248

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 114. Control of Air Pollution From Motor Vehicles

• 31 TAC §§114.1, 114.5, 114.11

The Texas Air Control Board (TACB) proposes amendments to §§114.1, 114.5, and 114.11, concerning maintenance and operation of air pollution control systems or devices used to control emissions from motor vehicles; exemptions and exceptions; and alternative fuel requirements for transit authorities. The proposal has three separate, but related actions, which: require aftermarket alternative fuel conversions of motor vehicle engines to be certified by the California Air Resources Board (CARB) or recognized, in writing, by U.S. Environmental Protection Agency (EPA) as complying with established policy memoranda; restrict the sale of complete or partial engines which do not conform to their original equipment manufacturer configurations; and add ethanol as an acceptable alternative fuel for use by transit authorities.

The amendments to §114.1 require CARB certification or EPA recognition of aftermarket motor vehicle alternative fuel conversion equipment as the demonstration of compliance necessary to verify that the emissions have not been adversely impacted, and modify other subsections of this section to ensure that proper engine configurations are maintained. The equipment must also be acceptable to the Texas Railroad Commission for safety approval. In order to be consistent with these revisions and to avoid "double exemptions" for alternative fuel vehicles, TACB proposes to delete subsection (c) of §114.5, concerning exemptions and exclusions. The EPA has issued policy guidance to states regarding the aftermarket conversions of motor vehicles to the use of alternative fuels which indicates that alternative fuel conversion technology is acceptable to EPA only under the following conditions: demonstrated compliance with Memorandum 1A, which requires manufacturers of aftermarket auxiliary devices to perform emissions certifications and durability tests as outlined in 40 Code of Federal Regulations Parts 85 and 86; certification by the CARB; or compliance with an established program implemented by the state to evaluate, approve, and/or certify conversion kits using CARB certifications as the minimum standards for durability, recall, and warranty.

The TACB staff has identified the second alternative as having the greatest air quality benefits with minimum adverse economic impacts on businesses and the consumer. Compliance with Memorandum 1A is not practicable at this time because EPA and TACB do not have official programs to evaluate and "approve" such conversions. TACB may issue waivers from the state

antitampering laws as set forth in §114.5(c), concerning exemptions and exclusions; however, EPA is under no obligation to recognize these exemptions and has the option to investigate and prosecute federal tampering violations. State agency, school bus, mass transit, local government, and private motor fleets, therefore, could be liable for federal violations set forth in the Federal Clean Air Act, §203 (Public Law 101-549). TACB has explored the option of creating an interim program to evaluate emissions from alternative fuel conversions and has determined that the program would involve substantial costs and resources to the state and, furthermore, would have to be upgraded in 1994 to account for more stringent standards set by EPA and CARB. TACB will continue to research the feasibility and desirability of establishing a certification program for Texas and will consider seeking the necessary resources in the upcoming legislative session if such a program is found to have sufficient merit. Lastly, TACB could adopt the 1994 EPA proposed standards, but the rule is not yet final and is likely to be revised as the proposal progresses through the federal rulemaking process.

There are no reliable estimates of the economic impact of requiring the sole use of CARB emissions certifications, although the TACB staff recognizes that the costs to the affected industry and the consumers may increase. The CARB certification process may require manufacturers to purchase and test California-certified vehicles which may be more expensive than the 49-state models, thus, increasing the associated certification costs. In addition, several CARB configurations require on-board feedback computer modules which have a \$200 to \$300 cost increment over a non-feedback system, thus, increasing production costs. The CARB approval system, however, is less costly and less stringent than federal testing procedures.

The amendments to §114.11 are developed in response to a petition from the Texas Corn Producers Board to add ethanol to the list of acceptable alternative fuels for use by transit authorities to satisfy applicable fleet conversion requirements. The TACB staff has reviewed the petition and other available information and has determined that sufficient evidence exists to warrant further consideration of the petition. However, TACB is assuming a neutral position on this issue and is soliciting information in support of or against the petition.

Senate Bill 769, 71st Legislature, requires that transit authorities located in nonattainment areas in Texas convert certain percentages of their fleets to be capable of using compressed natural gas or "other comparable alternative fuel" in accordance with established rules. In addition, all new vehicles purchased after September 1, 1991, must also be similarly equipped. Section 114.11, as adopted by TACB on March 8, 1991, and amended on April 17, 1992, identifies natural gas, liquified petroleum gas, electricity, and methanol as the only motor fuels satisfying the legislative intent.

The proposed change to §114.11 would add ethanol and ethanol/gasoline blends of 85%

(E85) or greater to the list in subsection (a), which defines acceptable alternative fuels. Adoption of this change will be dependent on the receipt of appropriate documentation which: quantifies the comparison of the emissions from vehicles using these fuels with the emissions from vehicles using natural gas; and characterizes the air quality benefits of using ethanol as a motor vehicle fuel.

Bennie Engelke, deputy director of administrative services, has determined that for the first five-year period the proposed sections are in effect there will be few additional fiscal implications for state and local governments, because EPA already recognizes CARB as the legitimate authority for aftermarket conversions in the United States; although, some pass-through costs might be associated with the more expensive conversion components. Limited implications may also be experienced by small businesses which have been manufacturing or installing unauthorized equipment. In order to reduce the potential for these violations, small businesses will need to make sure that the proper conversion kit configurations are installed. Correspondingly, EPA has always had a strict prohibition against replacing motor vehicle engines with engines which are not equivalent to the original equipment manufacturer's specifications; therefore, the fiscal impact on the state would be negligible because the amendments to §114.1 and §114.5 only clarify the intent of existing rules. Since the flexibility to use any listed alternative fuel remains available, as proposed in §114.11, the economic costs to businesses required to implement the ethanol measure would be unchanged or reduced by the proposals.

Lane Hartsock, deputy director of quality planning, 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 ethanol sections will be a broader choice in the selection of alternative fuel technologies. The two restrictive measures would help to ensure measurable air quality benefits.

A public hearing on this proposal will be held on September 10, 1992, at 10 a.m. in the Auditorium (Room 201S) of the TACB Central Office, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross examination is not permitted; however, a TACB staff member will be available to discuss the proposal and answer questions at 9:30 a.m., prior to the hearing.

Written comments not presented at the hearing may be submitted to TACB, 12124 Park 35 Circle, Austin, Texas 78753 through September 11, 1992. Material received by the Mobile Source Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposed sections. Copies of the proposal are available at the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, and at all TACB regional offices. For further information, contact Sam Wells at (512) 908-1516.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing

should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Clean Air Act (TCAA), §382. 017, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§114.1. Maintenance and Operations of Air Pollution Control Systems or Devices Used to Control Emissions From Motor Vehicles.

(a) (No change.)

(b) No person may remove or make inoperable any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof, except where the purpose of removal of the system or device, or part thereof, is to install another system or device, or part thereof, which is equally effective in reducing emissions from the vehicle. Acceptable removal and/or installation practices include:

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

(3) installation of conversion equipment to allow the use of an approved alternative fuel, as defined in §114.11 of this title (relating to Alternative Fuel Requirements for Transit Authorities), if:

(A) acceptable emissions reductions are verified by one of the following methods:

(i) the conversion equipment and configuration is certified by the California Air Resources Board; or

(ii) the conversion equipment and configuration is recognized in writing by the United States Environmental Protection Agency as complying with established federal policy memoranda; and

(B) the conversions kit components are recognized in writing by the Texas Railroad Commission as complying with applicable safety requirements;

(4) [(3)] replacement or installation of any other system or device if:

(A) the system or device can be demonstrated to be at least as effective in reducing emissions as the original equipment; and

(B) conformance with subparagraph (A) of this paragraph is documented, upon request.

(c)-(e) (No change.)

(f) No person may sell, offer for sale, or use any system or device which circumvents or alters [for the purpose of circumventing] any system, [or] device, engine, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program during actual in-use operation of a motor vehicle on Texas roadways. A notice of the prohibitions and requirements of this subsection shall be displayed at all motor vehicle parts, supply, repair, alternative fuel conversion, or other vehicle service facilities [or service facilities] in Texas which sell, offer for sale, install, or offer to install any vehicle emission control, [or] exhaust system, or device, aftermarket alternative fuel conversion, or engine. The notice shall be displayed in a prominent and conspicuous location near each consumer entrance way and service counter. The notice shall read: "State Law prohibits any person from selling, offering for sale, or using any system or device for the purpose of circumventing the emission control device on a vehicle or vehicle engine. State law also prohibits any person from removing or disconnecting any part of the emission control system of a motor vehicle, except to install replacement parts which are equally effective in reducing emissions. Violators are subject to penalties under the Texas Clean Air Act of up to \$25,000 per violation." This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.

§114.5. Exclusions and Exceptions.

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

[(c) The owner or operator of a vehicle equipped to operate on ethane, butane, propane, liquified petroleum gas (LPG), or compressed natural gas (CNG) are exempt from the provisions of §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the vehicle design precludes the use of gasoline, gasohol, or diesel fuel without modification or satisfies the requirements for dual-fuel conversions specified in the rules and regulations adopted by the Texas Department of Public Safety.]

(c)[(d)] Any person owning or operating a motor vehicle or motor vehicle engine may apply to the executive director for a waiver from the provisions of §114.1(a) and (b) of this title. Such a waiver may be granted if the following conditions are met.

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

(d)[(e)] The following vehicle transactions involving wholesale dealers and retail dealers as defined in the Texas Dealer Law, Texas Civil Statutes, Article

6686, and 43 TAC, are exempt from the requirements of §114.1(c) of this title:

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

(e)[(f)] Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.1(c) of this title if the following conditions are met:

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

(f)[(g)] The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.1(c) of this title if the inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

§114.11. Alternative Fuel Requirements for Transit Authorities.

(a) Metropolitan rapid transit authorities created under Texas Civil Statutes, Article 1118x, regional transportation authorities created under Texas Civil Statutes, Article 1118y, and city transportation departments created under Texas Civil Statutes, Article 1118z, shall ensure that fleet vehicles, including purchased vehicle services, are capable of being operated on alternative fuels, which are defined as follows:

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

(3) electricity; [or]

(4) methanol or methanol/gasoline blends of 85% (M85) or greater; or [.]

(5) ethanol or ethanol/gasoline blends of 85% (E85) or greater.

(b)-(h) (No change.)

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

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

TRD-9210350

Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Proposed date of adoption: October 15, 1992

For further information, please call: (512) 908-1451



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

- 37 TAC §§85.21, 85.25, 85.27, 85.29

The Texas Youth Commission (TYC) proposes amendments to §85.21, concerning the assessment and placement process; §85.25, concerning minimum length of stay; §85.27, concerning program restriction levels; and §85.29, concerning program completion and movement. The amendment in §85.21 reflects changes in procedure for making placement assignments of youth committed to the agency. The south region placement function is being discontinued. All youth will be evaluated at the statewide reception center in Brownwood. In addition, the changes in §85.21 and §85.25 establish a minimum length of stay of six months for youth classified by the agency as firearms offenders and general offenders. The requirement may be reduced by the deputy executive director under extenuating circumstances. The amendment to §85.27 clarifies that primary foster care is considered a minimum restriction placement. The amendment to §85.29 adds that a follow-up placement of youth may be to a placement of no less restriction than medium level unless the minimum length of stay has been completed.

John Franks, director of fiscal affairs, 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. Franks 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 more efficient evaluation of each youth's needs and risk. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules governing the study.

§85.21. Program Assignment System.

(a) Policy. Texas Youth Commission (TYC) utilizes an objective, equitable

system of program assignment for each youth in TYC care. Based on each youth's age, offense(s), and risk level, TYC has predetermined the most appropriate level of restriction and minimum length of stay requirements. Services provided by each program are matched with youth service needs to determine the most appropriate program placement. The assessment and placement process provides current information on individual youth needs. Male and female youth have equal access to agency programs and activities.

(b) Rules.

(1) Guiding principles. TYC's development of the system of program assignments is based on the following.

(A) (No change.)

(B) Among program placement alternatives of which each provides [provide] the required services and level of restriction, the placement selected is the one closest to the youth's home.

(2) Placement system factors. The program placement system incorporates the following factors.

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

(E) Placements are made according to restriction and needs.

(i)[(E)] The level of restriction required of the placement selected is determined by classification, age, and risk level. See GOP.47.07, §85.27 of this title (relating to Program Restriction Levels).

(ii) Initial placements are always to residential programs or day treatment programs providing services at least eight hours per day, five days per week, except for youth classified as violators of conduct indicating a need for supervision (CINS) probation.

(iii)[(F)] The youth's assessed service needs are used to select a placement within the required level of restriction.

(F)[(G)] See paragraph (5) of this subsection for waivers and exceptions to the placement system factors.

(3) System description. The determining factors and guiding principles result in the following initial placement determinations.

(A) -(K) (No change.)

(L) A firearms offender is [not] assigned a minimum length of stay of six months, and if 13 years or older, with

any risk level, is assigned to a program of high restriction.

(M) A firearms offender is [not] assigned a minimum length of stay of six months, and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(N) A general offender is [not] assigned a minimum length of stay of six months, and if 13 years or older, with a high risk level, is assigned to a program of high restriction.

(O) A general offender is [not] assigned a minimum length of stay of six months, and if 13 years or older, with a low or medium risk level, is assigned to a program of medium restriction.

[(P)] A general offender is not assigned a minimum length of stay and if 13 years or older, with a low risk level, is assigned to a program of minimum restriction.]

(P)[(Q)] A general offender is [not] assigned a minimum length of stay of six months, and if younger than 13 years, with any [a high or medium] risk level, is assigned to a program of medium restriction.

[(R)] A general offender is not assigned a minimum length of stay and if younger than 13 years, with a low risk level, is assigned to a program of minimum restriction.]

(Q)[(S)] A violator of CINS probation is not assigned a minimum length of stay, and regardless of age, with high or medium risk level, is assigned to a program of medium restriction.

(R)[(T)] A violator of CINS probation is not assigned a minimum length of stay and regardless of age, with low risk level, is assigned to a program of minimum restriction.

(4) Responsibility. The specific program placement selection for each youth is the responsibility of the statewide reception center for TYC training school placements and the centralized placement unit [; the south region assessment team for youth placed in Evins Regional Juvenile Center in the south region; and centralized placement unit] for all other placements, including Evins Regional Juvenile Center. Specific selection is based on:

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

(5) Waivers and exceptions. Waivers and exceptions may be granted under special circumstances.

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

(C) Any designated placement may be waived or the youth moved to any other placement of equal or less restriction if requested by the superintendent where the youth is located and granted by the executive director or designee.

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

(6) (No change.)

§85.25. Minimum Length of Stay.

(a) (No change.)

(b) Rules.

(1) Minimum length of stay.

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

(F) Firearms offenders serve at least six months in a [are not assigned a minimum length of stay. Firearms offenders are assigned to] a medium or high restriction program, minus any credited time following adjudication for the classifying offense.

(G) General offenders serve at least six months in a medium or high restriction program [are not assigned a minimum length of stay].

(H)-(I) (No change.)

(2) Creditable time.

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

(3) Waivers. For youth, except sentenced offenders and type A violent offenders, the minimum length of stay requirement may be reduced by the deputy executive director and only in extenuating circumstances when it is documented that the minimum length of stay would produce a detrimental effect on the youth and/or the community.

§85.27. Program Restriction Levels.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Levels.

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

(D) Minimum restriction—Any primary foster care program which provides [specialized] care and supervision services in the community or any residential program which provides treatment, training, or supervision less than five times a week.

(E) (No change.)

§85.29. Program Completion and Movement.

(a) (No change.)

(b) Rules.

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

(4) Criteria incomplete—follow-up movement procedures.

(A)[(B)] A follow-up placement is always to a placement of equal or less restriction than the youth's current placement but no less restriction than medium level unless the minimum length of stay has been completed.

(B)[(A)] A youth may be released to a follow-up placement when at a release review, program staff finds and documents that:

(i)-(ii) (No change.)

(C) (No change.)

(5)-(11) (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 July 31, 1992.

TRD-9210514

Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 483-5244

Part XI. Texas Juvenile Probation Commission

**Chapter 347. Title IV-E
Federal Foster Care Program**

- 37 TAC §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, 347.21

The Texas Juvenile Probation Commission proposes new §§347.1, 347.3, 347.5, 347.7, 347.9, 347.11, 347.13, 347.15, 347.17, 347.19, and 347.21, concerning Title IV-E of the Social Security Act in which the federal

government reimburses the Texas Department of Human Services (TDHS) for part of the foster care costs of eligible children. The Texas Juvenile Probation Commission has contracted with TDHS to make these federal funds available to eligible children in the juvenile justice system.

Steve Bonnell, deputy executive director, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$23,017 in 1992; \$120,683 in 1993; \$141,287 in 1994; \$161,891 in 1995; and \$161,891 in 1996. The effect on local government for the first five-year period the sections are in effect will be an estimated additional cost of \$108,840 in 1992, \$666,792 in 1994; \$762,048 in 1995; and \$762,048 in 1996. The number of children affected by the program are as follows: 150 in FY 1993; 350 in FY 1994; 400 in FY 1995; and 400 in FY 1996.

Mr. Bonnell 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 more comprehensive foster care services will be provided to juvenile offenders referred to juvenile probation departments. 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 Deborah J. Garza, P.O. Box 13547, Austin, Texas 78711.

The new sections are proposed under the Texas Human Resources Code, §§141.001, 141.041, and 141.042, which provides the Texas Juvenile Probation Commission with the authority to improve the effectiveness of juvenile probation services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services, and to adopt rules for these purposes.

§347.1. Introduction.

(a) The Texas Department of Human Services (TDHS) is the single state agency in Texas that administers Title IV-E of the Social Security Act, 42 United States Code, §670 et seq. The federal government reimburses TDHS for part of the foster care costs of eligible children served by TDHS. This law was enacted to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the programs for child welfare, social services, and Aid to Families with Dependent Children, and for other purposes. In addition, to be eligible for this program, TDHS must manage the cases of eligible children in compliance with standards set in section 427 of the Social Security Act. These requirements ensure careful management of a child's case. They require a case plan and a case review

system designed to return children to their families or some other permanent plan at the earliest possible date. They require a system to track the location of children in placement, even when they run away. It also includes protection of families' and children's rights.

(b) The Texas Juvenile Probation Commission (TJPC) has contracted with TDHS to make these federal funds available to reimburse part of the foster care costs of eligible children in the juvenile justice system. TJPC is willing to contract with any juvenile board which meets the federal requirements for Title IV-E and §427 of the Social Security Act. A juvenile board that wants to contract with TJPC to earn these funds must perform in the ways described in the following rules, §§347.3-347.21, and in certain rules of the Texas Department of Human Services referred to in these rules.

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

Administrative review—A review open to the participation of the parents of the child and conducted by a panel of no more than ten persons, one of whom acts as the designated facilitator and is not responsible for the case management of, or the delivery of services to either the child or the parents who are the subject of the review. The persons in attendance may include:

- (A) the juvenile probation officer;
- (B) the parent(s) of the child;
- (C) the juvenile probation officer's supervisor;
- (D) the child's caregiver;
- (E) the child;
- (F) the child's counselor;
- (G) the child's attorney;
- (H) the child's guardian ad litem; and
- (I) a representative from the child's school. The review is a meeting of interested persons concerning the child's case that determines the items set out in §347.15 of this title (relating to Case Plan and Review System):

Aid to families with dependent children (AFDC)—A financial assistance pro-

gram available to low income families who meet categorical requirements described in Texas Administrative Code, Title 40, Part 1, Chapter 3 concerning income assistance services.

Billing level of care—A numerical rating given to each IV-E approved facility to determine the rate of payment.

Caregiver or substitute care facility—Any IV-E approved facility or foster family.

Date of actual placement—The date the facility accepts the child for placement as per the written agreement between the juvenile probation department and the IV-E approved facility.

Disposition order—A court order that results in the child's placement in a IV-E approved facility.

Forms for information collecting:

(A) Child's Service Plan Form—TJPC-IV-E-F1;

(B) Review of Child's Service Plan Form—TJPC-IV-E-F2;

(C) Family Service Plan Form—TJPC-IV-E-F3;

(D) Review of Family Service Plan Form—TJPC-IV-E-F4;

(E) Foster Care Assistance Application Form—TJPC-IV-E-F5;

(F) Foster Care Assistance Application Review Form—TJPC-IV-E-F6;

(G) Foster Care, Adoption and Conservatorship Tracking System;

(H) (FACTS) Form—TJPC-IV-E-F7;

(I) Placement Information/Discharge Form—TJPC-IV-E-F8;

(J) Six-Month Administrative Case Review Form—TJPC-IV-E-F9;

(K) Request for Reimbursement Form—TJPC-401;

(L) Request for Reimbursement Correction Form—TJPC-401-C.

IV-E—A federal foster care program for children who qualify for financial assistance through the Aid to Families with Dependent Children Program, and who meet judicial requirements as stated in §472(a) of Public Law 96-272. Program benefits include Medicaid coverage and foster care benefits.

IV-E approved facility—There are two categories of facilities. One category includes a public residential child care institution which is licensed or certified for no more than 25 children, and is not a lock-up facility, a long-term secure detention program, or a forestry camp. Another category includes any non-profit residential facility that is licensed by Texas Department of Human Services (TDHS) as one of the following as they are defined in 40 Texas Administrative Code, Chapter 83:

(A) an emergency shelter;

(B) a foster family home;

(C) a foster group home;

(D) a therapeutic foster family home;

(E) a therapeutic foster group home;

(F) a residential treatment center;

(G) a maternity home;

(H) a halfway house;

(I) a child placing agency;

(J) a therapeutic camp; or

(K) a basic child care facility.

Incapacity—To be eligible for AFDC based on a parent's incapacity, one parent in the family group must have a medically determined mental or physical impairment. This impairment must have kept or will keep him from performing his usual work for at least 30 days from the application date. The Disability Determination Section (DDS), state office, determines incapacity for AFDC based primarily upon socioeconomic and medical information. The applicant's age, education, work experience, vocational training, and ability to speak English are evaluated to determine the level of work the person can do in spite of mental or physical impairment. The applicant's usual work is his main occupation for the last 15 years. His usual work is evaluated to determine the level of activity. Then, if medical information shows the applicant cannot perform this work, he meets the AFDC definition of incapacity until he recovers or is trained for another occupation.

Initial court order that removes the child from home—If a child is detained be-

fore a disposition hearing, the detention order is the initial court order that removes the child from home. If a child is not detained before a disposition hearing, the disposition order is the initial court order that removes the child from home.

Juvenile board—An administrative body established by state statute that is responsible for providing juvenile probation services within a defined jurisdiction.

Juvenile court—A court designated by the juvenile board under the Texas Family Code, §51.04, or other state law, which hears cases involving delinquent conduct or conduct indicating a need for supervision.

Level of care—A numerical rating that determines the child's level of service needs as described in the State of Texas Common Application for Placement of Children In Residential Care.

Plan for permanent placement—The determination required by Public Law 96-272, §475(5)(C) concerning a child's future status. It may include, but is not limited to:

(A) return to parent;

(B) placement with a relative(s);

(C) emancipation;

(D) independent living;

(E) long-term institutional care;

(F) permanent foster care; or

(G) long-term custodial care.

Reasonable efforts—A judicial determination regarding efforts made prior to a child's placement in substitute care to prevent or eliminate the need to remove the child from the home, and if the child is removed from the home, to make it possible for the child to return to the home.

Specified relative—Any blood relative, including those of half blood, and including first cousins, nephews, or nieces; persons of preceding generations as denoted by prefixes of grand, great, or great-great; stepfather, stepmother, step-brother, and stepsister. Persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law. Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

TJPC eligibility specialist—A person employed or contracted by TJPC who determines the IV-E status of children referred.

Twelve-month motion to modify hearing-A judicial hearing required by 42 United States Code 675. The hearing must be held no later than 12 months after the child's date of actual placement in a IV-E facility, and every 12 months thereafter throughout the child's stay in substitute care.

§347.5. Eligibility Requirements Documented in the Initial Court Order That Removes the Child from Home or the Subsequent Court Order.

(a) If a juvenile court finds that it is in a child's best interest to be removed from home, and includes this finding in the initial court order that removes the child from the home, then the child may be eligible for federal foster care payments. In addition, the court must find that reasonable efforts were made to prevent the child's removal from the home, and must order that responsibility for the child's care and placement rests with the juvenile probation department. The court may make the reasonable efforts finding at any time, but federal foster care payments may not begin until the finding is made. The order that places responsibility for the child's care and placement with the juvenile probation department must be entered within the first six months after the last day on which the child lived with a specified relative.

(b) The juvenile board must seek to ensure that the juvenile court determines whether it is in a child's best interest to be removed from home, or that continuation in the home is contrary to the child's welfare; whether responsibility for the child's care and placement should be given to the juvenile probation department; and whether reasonable efforts have been made to prevent the child's removal from the home. The juvenile board must seek to ensure that the juvenile court uses the following language to express its findings about best interest, responsibility for care and placement, and reasonable efforts in the initial court order that removes the child from home:

(1) "The court finds that it is in the best interest of the child for the child to be placed outside of (his or her) home;" or

(2) "The court finds that continuation in the home is contrary to the child's welfare;" and

(3) "It is ordered that the (name of county in which the court's jurisdiction arises) juvenile probation department be responsible for the child's placement, care, and control;" and

(4) "The court finds that reasonable efforts have been made to prevent or eliminate the need for the child to be removed from (his or her) home, and to make it possible for the child to return to (his or her) home."

(c) IV-E eligibility begins the month:

(1) the juvenile court enters into court orders the reasonable efforts, best interest, and care and placement responsibility findings as described in subsections (a) and (b) of this section; and

(2) all other IV-E eligibility requirements are met, as specified in the rule of the Texas Department of Human Services, 40 Texas Administrative Code, §49.316(3), (5), (6), (7), and (8); §49.317(1)(A), and (B), (3), and (4); §49.320(1), (3), and (4); §49.322; §49.323(1)-(4); §49.329(a)-(c); and §49.332.

(d) The effective date for discontinuing IV-E payments for substitute care is the date before the day the child leaves the facility.

(e) A child is eligible for IV-E reimbursement during an absence from a substitute care facility if the following conditions are met:

(1) the absence does not exceed 30 days. The child may be absent for up to 90 days if the chief juvenile probation officer approves the extended absence in writing;

(2) the child plans to return to the facility;

(3) the facility is retaining space for the child; and

(4) the juvenile probation department is not paying someone else or another facility for the child's care.

§347.7. Screening and Certification of IV-E Juveniles.

(a) The juvenile board ensures that the juvenile probation department performs the functions described in subsections (b), (c), and (e) of this section in the cases of children who are placed by orders that comply with §347.5 of this title (relating to Eligibility Requirements Documented in the Initial Court Order That Removes the Child from Home or the Subsequent Court Order).

(b) The juvenile probation department reviews the child's case and determines the following:

(1) whether the child's parents were on AFDC during the month court proceedings were initiated; or

(2) whether the parents would have been eligible for AFDC if they had applied during the month court proceeding were initiated; and

(3) whether the child's deprivation meets one or more of the following conditions:

(A) the parents never married;

(B) one of the child's parents is absent from the home due to divorce, death, or incarceration;

(C) the child's family's primary wage earner is unemployed;

(D) one of the child's parents is incapacitated as verified through Texas Rehabilitation Commission or Texas Department of Human Services;

(E) the child was living with one parent due to separation or desertion of other parent; or

(F) the child was living with a specified relative who qualifies for AFDC.

(c) If a child meets the requirements in subsection (b) of this section, then within 30 working days of the child's date of actual placement, the juvenile probation department must:

(1) complete the Foster Care Assistance Application form which includes:

(A) copies of the initial court order that removes the child from home or any subsequent court orders;

(B) a copy of the petition;

(C) verification of date of birth;

(D) documentation of the child's placement in a IV-E approved facility at a level of care determined by the definitions in the State of Texas Common Application for Placement of Children in Residential Care;

(E) the child's social security number or, if none, a completed social security application; and

(2) submit the completed Foster Care Assistance Application form and all attachments to the TJPC designated eligibility specialist.

(d) Upon receipt of the Foster Care Assistance Application form, the TJPC eligibility specialist completes the following functions within 30 working days:

(1) determines the child's eligibility for IV-E; and

(2) notifies the juvenile probation department in writing of the child's IV-E eligibility status.

(e) If a child meets the requirements in subsection (b) of this section, then the juvenile board must ensure that the juvenile probation department completes a service plan as described in §347.15 of this title (relating to Case Plan and Review System).

§347.9. Placement in IV-E Approved Facilities.

(a) If a facility is not approved by TDHS for participation under 40 TAC §49.328, the juvenile board must ensure that the juvenile probation department notifies TJPC of the following in writing at least 30 working days before a child's date of actual placement:

(1) the type of license or certification held by the facility, and the juvenile probation department's method of verification;

(2) the agency that issued the certification or license, and the juvenile probation department's method of verification;

(3) whether the facility is a private non-profit child care institution or a public facility for less than 25 and the juvenile probation department's method of verification;

(4) the billing level of care for the facility;

(5) that the written agreement between the facility and the juvenile probation department includes:

(A) the name, address, and telephone number of the facility;

(B) the facility's agreement to accept the State of Texas Common Application for Placement of Children in Residential Care document;

(C) the facility's agreement to submit a completed cost report to the juvenile probation department upon request;

(D) the facility's agreement that reimbursement for substitute care is contingent on the completion and submission of the cost report to TJPC; and

(E) the facility's agreement that failure to complete or submit a cost report is grounds for not paying, or contract termination.

(b) The juvenile board ensures that daily rates paid to the facilities shall not exceed the Department of Human Services standard rates for level of care.

§347.11. Aid to Families with Dependent Children Foster Care Recertification.

(a) The juvenile board must ensure that the juvenile probation department administers a process to recertify an eligible child's IV-E status every six months from the original certification date.

(b) The juvenile board must ensure that the juvenile probation department performs the following functions for each IV-E eligible child:

(1) maintains a system for keeping track of the IV-E status;

(2) maintains a system for keeping track of the IV-E redetermination date;

(3) completes a Foster Care Assistance Review form every six months or when changes affecting eligibility occurs; and

(4) submits to TJPC the Foster Care Assistance Review form within 30 working days of completion.

(c) The TJPC eligibility specialist performs the following within 30 working days of receipt of the Foster Care Assistance Review form:

(1) makes a redetermination of the child's IV-E status; and

(2) notifies the juvenile probation department of the results in writing.

§347.13. Family Reunification.

(a) The Child's Service Plan and the Family Service Plan includes family reunification services. The juvenile board must ensure that the juvenile probation department:

(1) assesses the home situation and offers services to the parents to help them resume supervision, care, and control of the child;

(2) plans for permanent placement for a child, if a child cannot return home; and

(3) documents in the child's case record a chronology of all contacts and services offered to the parent, child, and caregiver.

(b) The juvenile board must ensure that the juvenile probation department performs the following throughout the child's stay in substitute care:

(1) maintains contact with the child's family monthly, or more frequently as required by the family case plan;

(2) maintains contact with the child monthly, or more frequently as required by the child's case plan; and

(3) maintains monthly contact with the child's caregiver to address the needs of the child while in substitute care.

§347.15. Case Plan and Review System.

(a) The juvenile board must ensure that the juvenile probation department develops a service plan that meets the requirements of the Child's Service Plan and Family Service Plan within 30 working days of the child's date of actual placement.

(b) The juvenile board must seek to ensure that the juvenile probation department or the juvenile court conducts an administrative review or a judicial review, for each IV-E eligible child six months from the child's date of actual placement and every six months thereafter during the child's stay in the substitute care.

(c) If the six month review is an administrative review, the juvenile board must ensure that the juvenile probation department accomplishes the following:

(1) prior to the review, the juvenile probation officer completes the Review of Child's Service Plan and the Review of Family Service Plan and provides a copy of each to the designated facilitator;

(2) designates a facilitator who:

(A) develops and maintains a tracking system to schedule timely reviews;

(B) schedules the review at least three weeks prior to the actual review date;

(C) arranges the review by:

(i) informing parents and all persons who are listed in the Administrative Review definition about when and where the review will be conducted;

(ii) invites them;

(iii) documents the notice in the case record; and

(D) documents in the case record who participated in the review;

(3) during the review, the designated facilitator ensures that the following are discussed:

(A) continuing necessity for the child's placement;

(B) appropriateness of the child's placement;

(C) extent of compliance with the service plan;

(D) extent of progress which has been made toward solving or reducing the causes necessitating the child's placement in substitute care; and

(E) a likely date by which the child may be returned to the home; or

(F) a likely date by which the child's permanency plan will be achieved;

(4) the facilitator documents the results of the review on the Six-Month Administrative Case Review form.

(d) If the six-month review is a judicial review, the juvenile court performs the functions of the designated facilitator that are described in subsection (c) of this section except that instead of documenting the results of the review on the Six-Month Administrative Case Review form, the juvenile court documents the results in a court order. The juvenile court may delegate to its staff any responsibilities of the designated facilitator except documenting the results of the review in a court order.

(e) The juvenile board must seek to ensure that the juvenile court holds a hearing on a motion to modify the child's disposition 12 months after the child's date of actual placement and every 12 months thereafter during the child's stay in substitute care. For the hearing to qualify as a IV-E disposition hearing, the juvenile court must review the Child's Service Plan and enter an order that finds:

(1) the child's plan for permanent placement discusses the child's future status, and is appropriate;

(2) the projected time frame for accomplishment of the child's plan for permanent placement is appropriate;

(3) the juvenile probation department has made reasonable efforts to reunite the child with the family; and

(4) if the child is 16 years of age or older, whether an independent living plan has been developed to assist the child with the transition into adulthood;

(5) the parents' rights to be notified of the following have been protected:

(A) removal of the child from the home of his parents;

(B) change in the child's placement; and

(C) determination affecting visitation privileges for the parents;

(6) the Child's Service Plan was reviewed and updated and supplied to the caregivers each time the child was placed in substitute care, including medical and education information.

§347.17. Information System.

(a) The juvenile board must ensure that the juvenile probation department establishes and maintains an information system that captures the child's:

(1) current level of care;

(2) name, date of birth, ethnicity, and sex;

(3) present location;

(4) plan for permanent placement while in substitute care; and

(5) who is responsible for the child's care and placement.

(b) The juvenile board must ensure that the juvenile probation department performs the following functions:

(1) completes and submits to TJPC the FACTS form, and the Placement Information/Discharge form, which are to be completed within 30 working days of the child's date of actual placement; and

(2) completes and submits to TJPC the Placement Information/Discharge form, within 30 working days of a child's movement from one placement to another, the discharge from placement, and each time a child runs away for longer than a 30-day period.

§347.19. Foster Care Assistance Payments.

(a) A juvenile board must ensure that the juvenile probation department submits to TJPC the Request for Reimbursement Form within 60 days of the end of the month in which the services were provided.

(b) A juvenile board must ensure that the juvenile probation department submits to TJPC a Request for Reimbursement Correction Form within 60 days of the day on which it receives written notification from TJPC that TJPC has noted discrepancies on its Request for Reimbursement Form.

(c) When the juvenile board submits the Request for Reimbursement or the Request for Reimbursement Correction Form to TJPC, and TJPC receives federal reimbursement, then TJPC passes through to each juvenile board the reimbursement it receives for the juvenile board's IV-E eligible children in placement.

§347.21. Monitoring Compliance With IV-E.

(a) The juvenile board must ensure that the juvenile probation department:

(1) designates a case reader to monitor compliance with these rules;

(2) the case reader reads records of IV-E eligible children at least monthly;

(3) the results of the reading are reported to the case reader's supervisor;

(4) if any rules are not met, the supervisor submits a written corrective action plan to the Chief Juvenile Probation Officer; and

(5) the juvenile probation department submits a report to TJPC about its monitoring results on or before the tenth of each month.

(b) TJPC staff monitors juvenile probation departments operated by participating juvenile boards as needed, but not less than quarterly.

(c) The juvenile board allows monitors from TJPC to review IV-E case records, and department systems for compliance, documentation, and verification with these rules.

(d) TJPC notifies the juvenile board in writing about its non-compliance.

(e) The juvenile board must ensure that the juvenile probation department responds to written notice of non-compliance with a written corrective action plan that includes a projected date of compliance within 30 working days of receipt of the notice.

(f) If a juvenile probation department fails to respond to the written notice of non-compliance, or continues to be out of compliance with one or more of these rules for two consecutive months, then TJPC pursues further action, which may include one or more of the following:

(1) arranging a meeting with the juvenile probation department to discuss:

(A) problems with non-compliance and reasons for non-compliance;

(B) identification of needed resources to assist with correcting problems areas; and

(C) strategies to correct problem areas;

(2) requiring a written corrective action plan and expected date of compliance to be submitted to TJPC within 30 working days of conference date with the juvenile probation department or receipt of written notice of non-compliance;

(3) suspending federal funds to the juvenile probation department temporarily until compliance with federal standards is accomplished;

(4) requiring the juvenile probation department to reimburse funds to TJPC; and

(5) terminating the IV-E contract between TJPC and the juvenile board.

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 July 30, 1992.

TRD-9210402

Bernard Licarione, Ph.D.
Executive Director
Texas Juvenile Probation
Commission

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 443-2001

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas

Commission on Alcohol and Drug Abuse

Chapter 150. Licensure of Chemical Dependency Counselors

Counselor Licensure Rules

• 40 TAC §150.1, §150.13

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §150.1 and §150.13, concerning chemical dependency counselor licensure rules. The amendments further define requirements for counselor interns and clarify requirements in continuing education for license renewal.

Denise Hudson, director, fiscal services, 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.

Ms. Hudson 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 that all chemical dependency counselors in the state will meet certain ethical standards and educational and experiential requirements to ensure quality services to clients. 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 Denise Mosel, Division Assistant, Administrative Services, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506.

The amendments are proposed under Texas Civil Statutes, Article 45120, which provide

the Texas Commission on Alcohol and Drug Abuse with the authority to establish a procedure by which the commission is to license chemical dependency counselors. The commission prescribes the rules and procedures by which a person who provides chemical dependency counseling must obtain a license issued under this Act.

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

Direct supervision—Requires that a licensed counselor be available for assistance, if necessary. It shall also require a complete review of the counselor intern written work product on a weekly basis and shall include no less than one supervisory visit per week to observe the counselor intern in a counseling (group/individual) setting. Further, the licensed supervisor shall assume responsibility for the actions of the counselor intern within the scope of internship counseling duties.

Qualified credentialed professional (QCP)—An individual who is either a licensed chemical dependency counselor or who is certified, licensed, approved, or registered by the State of Texas as a certified social worker (CSW), advanced clinical practitioner (ACP), licensed professional counselor (LPC), psychologist, psychological associate, or physician, physician assistant, or registered nurse. Individuals who are not LCDCs must demonstrate two years of chemical dependency counseling experience.

Supervised work experience—Documented, verifiable work experience, paid or voluntary, within the 12-core functions [in the field] of chemical dependency counseling, which is performed under the direct supervision of a licensed [professional] chemical dependency counselor or qualified credentialed [licensed health care] professional [, including work in the 12-core functions]. A counselor intern may not supervise another counselor intern and the ratio of intern to licensed supervisor shall not exceed 5:1.

§150.13. License Expiration; Renewal. A license issued under this chapter shall be valid for two years from the date of issuance. The expiration date shall be set forth on the license certificate. The biennial renewal fee is payable on renewal of the license before or on the expiration date.

(1) Requirements for license renewal. In order to renew a license issued pursuant to this chapter, a person must:

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

(C) complete at least 60 hours of continuing education approved by the commission including at least three

hours of course work in each of the following areas: ethics, HIV education, cultural awareness and sensitivity, compulsive gambling, sexual abuse, and 45 hours of chemical dependency related continuing education [the 12 core functions] in each two-year period in which the person holds a license; and

(D) (No change.)

(2)-(3) (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 July 30, 1992.

TRD-9210441

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 867-8720

Chapter 154. DWI Repeat Offender Program Standards and Procedures

General Provisions

• 40 TAC §§154.1-154.7

The Texas Commission on Alcohol and Drug Abuse proposes new §§154.1-154.7, concerning DWI Repeat Offender Programs. The new sections define terms commonly used and establishes minimum standards and criteria for the operation of approved DWI repeat offender programs for persons who are convicted of the offense of DWI more than once, and a court has required that person to attend a DWI repeat offender educational program. The sections are proposed to define what programs must do to become a DWI repeat offender program approved by the Texas Commission on Alcohol and Drug Abuse.

Denise Hudson, director, fiscal services, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rule however, there is no known basis for calculating costs for each program. Cost will vary, depending on the fees each program chooses to assess each participant.

Ms. Hudson 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 the establishment of quality programming in DWI repeat offender programs approved by the commission. The cost of compliance with the rule for small businesses will be unknown. No known basis for calculating costs. Costs will vary with each program, depending on

whether they raise the fee per participant to cover any additional costs incurred for complying. The possible economic cost to persons who are required to comply with the rule as proposed will vary, depending on the fees each program chooses to assess each DWI Repeat Offender Program participant. Approximate costs to individuals will be \$0 to \$250 for fiscal years 1993-1997.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506.

The new sections are proposed under the Texas Code of Criminal Procedure Article 42.12, §13(j), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of approved DWI Repeat Offender Programs for persons who are convicted of the offense of DWI more than once, and a court has required that person to attend a DWI repeat offender educational program.

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

Approved DWI repeat offender program—An educational program for DWI repeat offenders which has been approved by the Texas Commission on Alcohol and Drug Abuse pursuant to this chapter, and is authorized under the Texas Code of Criminal Procedures, Article 42.12, §13(j).

Class records—Personal data forms, screening instrument(s), homework assignments, action plans and any other written material required or utilized in the class instruction.

Class roster—A form which shall include information on those participants officially enrolled and in attendance at the first class session, which is used to collect required data on those participants throughout the course.

Class size—The number of participants officially enrolled and in attendance at each class session.

Commission—The Texas Commission on Alcohol and Drug Abuse.

DWI—The offense of driving while intoxicated as defined in Texas Civil Statutes, Article 67011-1.

Texas DWI Intervention Program—An intensive educational course designed for DWI repeat offenders which consists of prescribed registration and screening procedures, administrative records, classroom instruction, written coursework, individual sessions, and post-course record keeping.

Report period—That period of time beginning with the date the approval of the DWI Repeat Offender Program was granted by the commission and ending August 31 of each year.

Screening instrument—A written device administered to each program participant for the purpose of:

(A) identification of the existence of a significant substance abuse problem;

(B) making recommendations for further evaluation, counseling or treatment where indicated.

§154.2. Objective. The intent of the commission by adoption of this chapter is to promulgate written rules, regulations and standards for the uniform operation of educational programs for DWI repeat offenders. Adoption of these rules is authorized by the Texas Code of Criminal Procedure, Article 42.12, §13(j), which provides that when a person has been convicted of the offense of DWI more than once, a court may require or permit that person to attend a DWI repeat offender educational program if that person was previously required to attend an approved DWI educational program as a condition of probation for their first DWI conviction. By adoption of this chapter, it is the intention of the commission that DWI repeat offender educational programs shall utilize a uniform curriculum approved by the commission (the Texas DWI Intervention Program) which is specifically designed as an intensive educational course for repeat offenders.

§154.3. Scope of Rules, Regulations, and Standards. Any entity or individual seeking to operate an Approved DWI Repeat Offender Program shall be required to obtain written approval by the commission pursuant to this chapter. Any individual or entity operating, employed by, or providing instruction in the curriculum of an Approved DWI Repeat Offender Program, shall be required to comply with this chapter.

§154.4. Program Approval.

(a) A program seeking approval by the commission as an Approved DWI Repeat Offender Program shall be required to make application to the commission on a prescribed application form.

(b) Upon designation as an Approved DWI Repeat Offender Program, notification of approval will be issued to the program by the commission.

(c) Approval shall become effective on the first day of the month following notification of approval, and shall expire on the 31st day of August of the first odd-numbered year thereafter.

§154.5. Approved DWI Repeat Offender Program Renewal.

(a) Within 30 days prior to the expiration of approval, an Approved DWI Repeat Offender Program seeking renewal

of approval by the commission shall be required to make application to the commission for renewal on a prescribed application form.

(b) Upon the renewal of approval of the program, a notification of renewal of approval will be issued to the program by the commission.

(c) Approval shall become effective on September 1st of the year of renewal, and shall expire on the 31st day of August of the first odd-numbered year thereafter.

(d) Approved DWI Repeat Offender Programs which fail to obtain renewal of approval prior to September 1st on the year of expiration of approval, shall be required to make application to the commission pursuant to §154.4 of this title (relating to Program Approval).

§154.6. Denial, Revocation, or Nonrenewal of Approval.

(a) Grounds. The commission may deny, revoke, or refuse to issue or renew a program's approval if the program or any person connected with the program fails to comply with the rules, regulations, and standards of the commission as set forth in this chapter, or with any other requirement of law.

(b) Notice of intent to deny, revoke, or refuse to renew program approval. Whenever the commission proposes to deny, revoke, or refuse to renew program approval, the program shall be given written notification by the issuance of a notice of intent to deny, revoke, or refuse to renew program approval which shall be mailed to the program by registered or certified mail at the address on file with the commission.

(c) Show cause hearing before the executive director. Any program which has been issued a notice of intent to deny, revoke, or refuse to renew program approval shall be entitled to submit within 30 days of mailing of such notice, a request for hearing before the executive director and shall be given the opportunity to show cause why such action should not be taken by the commission. At the show cause hearing the program shall have the right to introduce evidence, to call witnesses, and to cross-examine witnesses who testify in support of the commission's proposed action. The commission shall be entitled to submit evidence through affidavits and documentation, or through the testimony of witnesses. The rules of evidence shall not apply. The executive director shall decide whether or not the show cause hearing shall be recorded.

(d) Notice of denial, revocation, or refusal to renew program approval. After a show cause hearing under subsection (c) of this section, or after 30 days from the mail-

ing of the notice of intent to deny, revoke, or refuse to renew program approval if a show cause hearing was not requested, the program shall be given written notification of the decision of the commission. If the commission decides to deny, revoke, or refuse to renew program approval, a notice of denial, revocation, or refusal to renew program approval shall be issued to the program, which shall include written notification of the grounds upon which such action was taken, and the procedure for seeking an appeal.

(e) Contested cases; administrative review. A program which has been issued a notice of denial, revocation, or refusal to renew program approval shall have the right to contest such action by the commission pursuant to the procedures set forth for administrative review of contested cases in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a); provided however, within 30 days from the registered or certified mailing of the notice of denial, revocation, or refusal to renew program approval, the program shall be required to give notice to the commission of the program's intent to contest the commission's action.

(f) Final action. Unless contested pursuant to the procedures set forth in subsection (e) of this section or as otherwise required by law, the commission's action shall become final 30 days after the registered or certified mailing of the notice of denial, revocation, or refusal to renew program approval and shall not thereafter be subject to appeal or review.

§154.7. Invalidity of Provisions. If any part of this chapter is found to be invalid by a court of competent jurisdiction, this shall not affect any other part of this chapter which is not dependent upon the invalid part. For this purpose, all parts of this chapter are declared to be severable.

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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TRD-9210445

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 867-8720



DWI Repeat Offender Program Standards

• 40 TAC §§154.20-154.32

The Texas Commission on Alcohol and Drug Abuse proposes new §§154.20-154.32, concerning DWI Repeat Offender Programs. The sections establish minimum standards and criteria for the operation of approved DWI repeat offender programs for persons who are convicted of the offense of DWI more than once, and a court has required that person to attend a DWI repeat offender education program. The sections are proposed to define what programs must do to become a DWI repeat offender program approved by the Texas Commission on Alcohol and Drug Abuse.

Denise Hudson, director, fiscal services, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections however, there is no known basis for calculating costs for each program. Cost will vary, depending on the fees each program chooses to assess each participant.

Ms. Hudson, 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 the establishment of quality programming in DWI repeat offender programs approved by the commission. The cost of compliance with the rule for small businesses is unknown. No known basis for calculating costs. Costs will vary with each program, depending on whether they raise the fee per participant to cover any additional costs incurred for complying. The possible economic cost to persons who are required to comply with the rule as proposed will vary, depending on the fees each program chooses to assess each DWI Repeat Offender Program participant. Approximate costs to individuals will be \$0 to \$250 for fiscal years 1993-1997.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506.

The new sections are proposed under the Texas Code of Criminal Procedure Article 42.12, §13(j), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of approved DWI repeat Offender Programs for persons who are convicted of the offense of DWI more than once, and a court has required that person to attend a DWI repeat offender educational program.

§154.20. Program Purpose. The purpose of an Approved DWI Repeat Offender Program shall be to educate participants about chemical dependency and the problems associated with chemical dependency; to provide intensive instruction about specific actions participants can take to prevent future DWI offenses; and to instruct participants about methods and ways to make

necessary lifestyle changes in order to prevent alcohol/drug-related problems in other areas of the participants' lives.

§154.21. Program Content. The content of an Approved DWI Repeat Offender Program shall be uniform, and shall consist of the curriculum contained in the Texas DWI Intervention Program. The Texas DWI Intervention Program is a state-approved curriculum which is hereby adopted by the commission and incorporated by reference herein. The Texas DWI Intervention Program has been approved by the commission, and is available for review free of charge, at the Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701-2506, (512) 867-8700.

§154.22. Program Admission. The following persons are eligible for admission to an Approved DWI Repeat Offender Program:

(1) any person who is required or permitted to attend such a program pursuant to court order under the Texas Code of Criminal Procedure, Article 42.12(j); and

(2) any other person the program administrator allows to attend.

§154.23. Confidentiality. Approved DWI Repeat Offender Programs shall abide by all applicable federal and state laws relating to confidentiality of patient/client records including, without limitation, 42 United States Code §290dd-3 and §290ee-3; 42 Code of Federal Regulations, Part 2; and the Texas Health and Safety Code Annotated, Chapters 461-467.

§154.24. Program Operation Requirements. All Approved DWI Repeat Offender Programs shall be required to:

(1) utilize the state-approved curriculum entitled *Texas DWI Intervention Program* and present the curriculum in the manner and sequence prescribed therein;

(2) insure that all program instructors have attended and successfully completed the Administrator/Instructor DWI Intervention Training Program approved by the commission;

(3) insure that all classes are conducted by certified instructors;

(4) conduct class sessions which are not longer than three hours in length, and not shorter than two hours in length;

(5) conduct no more than one class session per day;

(6) conduct no more than two class sessions per week;

(7) insure that participants attend all class sessions;

(8) insure that participants attend class sessions in the sequence prescribed in the Texas DWI Intervention Program;

(9) provide make-up class sessions for excused absences;

(10) conduct a minimum of two individual sessions and an exit interview with each participant as outlined in the Texas DWI Intervention Program;

(11) conduct the course a minimum of one time during each reporting period;

(12) provide a minimum of 30 hours of class instruction per course;

(13) conduct classes no larger than 15 participants;

(14) make provisions for persons who are unable to read and/or speak English;

(15) display transparencies, slides, films, and videos in a manner which:

(A) produces a clear image when projected on a surface;

(B) utilizes a television monitor which should be at least 25 inches in diameter;

(C) utilizes high quality videotapes;

(D) allows all participants to have an unobstructed view;

(16) utilize all films and/or videos, transparencies, participant workbooks, booklets and any other resources or written materials required in the Texas DWI Intervention Program;

(17) provide appropriate facilities for class instruction which are in compliance with the Americans with Disabilities Act-1990;

(18) administer and evaluate a screening instrument which has been approved by the commission for the purpose of identifying the existence of a substance abuse problem, which screening shall be performed by program personnel including program administrators and instructors, or if performed by support staff, under the direct supervision of program personnel;

(19) complete all registration, data collection, and screening procedures as outlined in the Texas DWI Intervention Program prior to the first class;

(20) administer a student course evaluation at the end of each course;

(21) maintain attendance records, class rosters and other administrative records as outlined in the Texas DWI Intervention Program;

(22) insure that the class rosters contain the following information for each participant:

(A) date of enrollment in course;

(B) date of completion of course;

(C) participant's name;

(D) participant's driver's license number (or if participant does not possess a drivers license number, the date of birth and/or social security number);

(E) screening instrument score(s);

(F) blood alcohol level at time of arrest (if known);

(G) number of prior alcohol/drug-related arrests;

(H) documentation verifying that the personal data, agreement form, screening data and exit interview requirements were completed as outlined in the Texas DWI Intervention Program;

(I) attendance records.

(23) make available to each participant a listing or roster of available chemical dependency counseling and treatment resources in the area;

(24) set definite and reasonable course fees;

(25) course fees should be utilized to maintain and enhance the program's operations;

(26) have resources which are sufficient to carry out the program to completion;

(27) certificate of program approval must be prominently displayed at the principal location where services are provided.

§154.25. Discrimination Prohibited. Any action taken, or function performed by an Approved DWI Repeat Offender Program pursuant to this chapter or otherwise shall

be done without regard to the sex, race, religion, age, national origin, or disability of the person affected.

§154.26. Participant Complaints. Approved DWI Repeat Offender Programs shall prominently display at each site where coursework is conducted a sign containing the name, mailing address, and telephone number of the commission and a statement notifying all persons that any complaints against the program may be directed to the commission. Upon verbal or written request, Approved DWI Repeat Offender Programs and any person associated therewith, including, without limitation, staff, volunteers, administrators, officers and directors, shall be required to expeditiously provide complete and concise information about complaint procedures, including procedures for complaining directly to the commission.

§154.27. Program Administrators.

(a) Each Approved DWI Repeat Offender Program shall designate a program administrator who shall be responsible for and insure the proper operation of the program and compliance with this chapter.

(b) Program administrators shall be required to provide the court system and the commission with written class schedules for distribution to potential participants, which shall include the dates, times, and locations where classes will be held, and the fees charged by the program for course attendance.

(c) Program administrators shall develop a written job description setting forth the duties, responsibilities, and performance requirements of the program administrator and instructors.

(d) Program administrators shall be knowledgeable about the Approved DWI Repeat Offender Program operation, course scheduling, court referrals, and court operations.

(e) Program administrators shall be knowledgeable about the curriculum entitled the *Texas DWI Intervention Program*;

(f) Program administrators should meet all of the requirements for program instructors, including the ability to teach the course.

§154.28. Program Instructors. Program instructors must:

(1) be certified as a certified counselor in training, certified alcohol and drug abuse counselor, licensed counselor intern, licensed chemical dependency counselor, certified social worker, licensed professional counselor, or psychologist, or possess a bachelor's degree in the field of sociology, psychology, rehabilitation coun-

seling, or a closely related field approved by the commission;

(2) have a minimum of two years of chemical dependency counseling experience;

(3) serve as resource manager by referring participants to a full range of community services as needed;

(4) be knowledgeable about the curriculum entitled the *Texas DWI Intervention Program*, and utilize that curriculum in instruction of participants;

(5) work in coordination with probation personnel and abide by all program policies and procedures and standards as approved by the courts, probation personnel, Criminal Justice Assistance Division and the commission;

(6) have completed training in the administration of the approved screening instrument utilized by the program;

§154.29. Classroom Facilities.

(a) Appropriate classroom facilities which are conducive to study and encourage good educational practices shall be provided for the participants in an Approved DWI Repeat Offender Program, and shall have:

(1) a sufficient number of tables or desks;

(2) adequate seating;

(3) sufficient lighting;

(4) appropriate acoustics and climate control.

(b) Classroom facilities shall be easily accessible to all class participants.

(c) Equipment shall be maintained in good working order and in good condition for use in class instruction.

§154.30. Record Keeping and Reporting.

(a) Data collection.

(1) The program administrator shall be responsible for collecting and maintaining data on each class participant as required in §154.24 of this chapter (relating to Program Operation Requirements).

(2) Class rosters shall be retained by the program administrator for at least three years from the date of course completion. All other records shall be retained for a period of one year from the date of course completion.

(b) The program administrator shall submit the following information to the commission no later than September 15 of each year:

(1) total number of participants entering each course;

(2) total number of participants successfully completing each course;

(3) total number of courses held annually;

(4) driver's license numbers of all participants, or, in the absence of a driver's license number, the social security number and birth date of each participant;

(5) total number of participants who enter treatment as result of participation in the Approved DWI Repeat Offender Program.

(c) The program administrator shall notify the commission within 30 days of any change of address, telephone number, or change of program administrator or instructors.

§154.31. Program Listing. A list of Approved DWI Repeat Offender Programs will be maintained by the commission.

§154.32. Program Monitoring. The commission shall have the right to monitor all Approved DWI Repeat Offender Programs for verification of compliance with this chapter.

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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TRD-9210446

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

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For further information, please call: (512) 867-8720

Part IX. Texas Department on Aging

Chapter 253. State Aging Plan

• 40 TAC §253.3

The Texas Department on Aging proposes new §253.3, concerning funding allocation formula for Older Americans Act Title III Programs and Area Agencies on Aging. This policy proposes the formula for distribution of federal funding and state general revenue to local area agencies on aging.

Charles Hubbard, director of finance and administration, has determined that there will be fiscal implications. Although the overall funding for the state will not be affected, there are shifts in funds among the 28 area agencies within the state, some areas will be getting more, some less. Areas receiving less may wish to maintain current service levels by accessing other resources. The two-year

phase-in is designed to lessen the negative impact during the first year.

Charles Hubbard, director of finance and administration has determined that for each of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to distribute program funds more effectively by using the most current (1990) Census Bureau information and by targeting the elderly most in need. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be none.

Comments on the proposal may be submitted to Charles Hubbard, Director of Finance and Administration, Texas Department on Aging, 1949 IH-35 South, Skyline Building, Austin, Texas 78741.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operations of this department.

§253.3. Funding Allocation Formula for Title III Programs and Area Agencies on Aging.

(a) Goal of the formula. The goal of this formula is to distribute Title III Funding in an equitable manner based upon the most recent census information; and in so doing clearly follow the intent of the Older Americans Act of 1965, as amended, and related federal regulations which emphasize addressing the needs of those "in greatest economic or social need" with particular attention to low-income minority individuals (45 Code of Federal Regulations §1321.37(a)).

(b) Area agency on aging administration funds. An area agency on aging administration pool from which each area agency would be allocated no less than \$85,000. The administration pool is composed of 10% of the federal allocation of funds to area agencies on aging.

(1) Allocation of all the administration funds from the administration pool is computed according to the following formula of weighted factors:

(A) total population aged 60 and over, weighted at 40%;

(B) total population aged 60 and over who are minorities, weighted at 10%; and

(C) total population aged 60 and over who are living on incomes below the poverty level, weighted at 50%.

(2) For each factor, the number of persons in each area agency on aging region, based on the official 1990 Census

data, is established as a percent of that factor for the State of Texas and weighted as shown to determine the overall proportion of the funding that will be allocated to each area agency on aging. For the administration funds, this proportion is applied to the administration funds pool, then adjustments are made proportionately so that no area agency on aging receives an allotment of less than \$85,000 for administration.

(c) Supportive and nutrition services funds. Each area agency on aging will be awarded Title III funding for services in accordance with the Older Americans Act as amended, paragraph 305(a)2(C), in the following manner.

(1) A base amount of \$100,000 for Title III Supportive Services and a base amount of \$100,000 of Title III Nutrition Services funding.

(2) Allocation of the remaining service dollars is computed according to the following formula of weighted factors:

(A) total population aged 60 and over, weighted at 40%;

(B) total population aged 60 and over who are minorities, weighted at 10%; and

(C) total population aged 60 and over who are living on incomes below the poverty level, weighted at 50%.

(3) For each factor, the number of persons in each area agency region, based on the 1990 official Census data, is established as a percent of that factor for the

State of Texas and weighted as shown to determine the overall proportion of the funding that will be allocated to each area agency on aging.

(d) Phase-in for implementation of formula. The funding changes for each region, resulting from the above stated formula, will be phased into use over a two year period. One-half of the resulting funding changes (increases and decreases) take effect in fiscal year 1993 and the remaining one-half of the resulting changes to be implemented in fiscal year 1994 awards.

(e) Formula assumptions. The assumptions used in selecting the formula elements and their respective weights are as follows.

(1) Some portion of the funds distribution should be based upon the population of all individuals age 60 and over within a PSA, since the Older Americans Act (OAA) is designed for all persons age 60 and over regardless of other characteristics. However, due to the emphasis of the OAA and regulations on subgroups within this population, it should not be the largest factor, hence 40%.

(2) The OAA defines greatest social need as "the need caused by non-economic factors which include physical and mental disabilities, language barriers, and cultural, social, or geographic isolation including that caused by racial or ethnic status which restricts an individual's ability to perform normal daily tasks or which threatens such individual's capacity to live independently", (OAA 302(21)). The use of the age 60 and over minority population statistic addresses this emphasis. However, this factor, by itself, is not the most important, hence 10%.

(3) The OAA defines greatest economic need as "the need resulting from an income level at or below the poverty levels established by the Office of Management and Budget", (OAA 302(20)). Significant portions of the low income elderly population are minorities and/or live in isolated areas. In addition, there is a strong correlation between income and an individual's health, and access to health care. Therefore, the low income component addresses not only those individuals with "greatest economic need", but also factors defining "greatest social need" as quoted above. (Studies supporting this conclusion include: "Income and Poverty Trends for the Elderly" Cynthia M. Tauber, M.A., Bureau of the Census, United States Department of Commerce, March 26, 1992; and "Health Care Financing Among the Elderly: Who Really Pays the Bills?", T. M. Smeeding and L. Straub, published in the Journal of Health Politics, Policy and Law 12 (1, Spring 1987). For these reasons, this is determined to be the most significant element and therefore received twice the weight of each of the other two elements, 50%. In addition, the elements described under paragraphs (2) and (3) above address the stipulation in the OAA for "particular attention to low income minority individuals".

(4) The formula should provide for a minimum amount to each PSA for the administration of the programs and a minimum amount for the provision of services within each PSA. The OAA, §304, provides for minimum allotments to states. It makes sense to do the same for each PSA.

(5) The following is a demonstration of the allocation of funds by PSA using this proposed formula and the FY1992 Title III Funding figures.

AAA	Area Admin	Services	Totals
Alamo	90,010	971,377	1,061,387
Ark-Tex	85,000	926,527	1,011,527
Bexar	252,944	2,367,711	2,620,655
Brazos	85,000	664,591	749,591
Capital	146,508	1,455,562	1,602,070
Central	85,000	699,521	784,521
Coastal	136,036	1,365,816	1,501,852
Concho	85,000	533,421	618,421
Dallas	265,028	2,471,267	2,736,295
Deep East	107,262	1,119,226	1,226,488
East Texas	196,998	1,888,257	2,085,255
Golden	85,000	680,434	765,434
Harris County	411,692	3,728,154	4,139,846
Heart of Texas	87,358	948,652	1,036,010
H-GAC	196,179	1,881,238	2,077,417
Lower Rio	200,363	1,917,099	2,117,462
Middle Rio	85,000	628,893	713,893
North Central	163,697	1,602,869	1,766,566
North Texas	85,000	703,689	788,689
Panhandle	85,077	929,102	1,014,179
Permian	85,000	859,176	944,176
Rio Grande	138,014	1,382,773	1,520,787
South East	91,978	988,241	1,080,219
South Plains	85,000	875,526	960,526
South Texas	85,000	704,129	789,129
Tarrant County	156,477	1,541,000	1,697,477
Texoma	85,000	586,493	671,493
West Central	95,779	1,020,820	1,116,599
Totals	3,756,400	35,441,564	39,197,964

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 July 31, 1992.

TRD-9210478
 Mary Sapp
 Executive Director
 Texas Department on
 Aging

Earliest possible date of adoption: September 7, 1992

For further information, please call: (512) 444-2727



TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 2. Environmental Affairs

Subchapter B. Memoranda of Understanding with Natural Resource Agencies

• 43 TAC §2.23

(Editor's note: The Texas Department of Transportation filed proposed new §2.23 and §2.24 which was published in the July 14, 1992, issue of the Texas Register (17 TexReg 5012) The attached memorandum of understanding was inadvertently left out of the issue. The sections are being republished in this issue for clarification.

The earliest date of adoption is August 14, 1992.)

The Texas Department of Transportation (TxDOT) proposes new §2.23, concerning memorandum of understanding with the Texas Water Commission. Section 2.23 adopts as Exhibit A a memorandum of understanding between the department and the Texas Water Commission (TWC) which provides for the review of department projects that have the potential to affect natural resources within the jurisdiction of TWC and concerns the development of a system by which information developed by TxDOT and TWC may be exchanged to their mutual benefit.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, required the department to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources.

Article 6673g also requires the department and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to meet this legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, this new section is being proposed for permanent adoption.

Roland Gamble, P.E., director, division of environmental affairs, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The department is unable to assign an exact cost to the state that will be associated with the increased coordination effort between TxDOT and TWC. It is not possible to estimate the cost of additional environmental mitigation and/or enhancement resulting from the proposed section since the type and extent of mitigation and/or enhancement is related to the scope and extent of specific departmental activities or projects and the anticipated associated environmental impacts. However, it is the department's position that the benefits to the natural environment and the benefits to the public will more than offset the increased coordination and environmental mitigation/enhancement costs associated with administering the proposed new section.

Mr. Gamble also has determined that there will be no effect on local government or small businesses as a result of enforcing the proposed section.

Mr. Gamble has certified that there will be no significant impact on local economies or overall employment as a result of administering the proposed new section.

Mr. Gamble has determined that for each year of the first five years the sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing the section will be the increased coordination and communication between the department and the Texas Water Commission resulting from implementation of the memorandum of understanding which will benefit the public by ensuring that the natural environment is preserved to the fullest extent possible and enhanced when practicable.

Comments on the proposal may be submitted to Roland Gamble, P.E., Director, Division of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701. The department and TWC will hold a joint public hearing at a future date with notice of the hearing to be published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Articles 6666 and 6673g, which

provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically for the adoption by rule of memoranda of understanding with natural resource agencies.

§2.23. Memorandum of Understanding with the Texas Water Commission.

(a) The Texas Department of Transportation (TxDOT) adopts as Exhibit A-23 a memorandum of understanding between TxDOT and the Texas Water Commission (TWC) concerning:

(1) the review of department projects which have the potential to affect natural resources within the jurisdiction of TWC, in order to assist TxDOT in making environmentally sound decisions; and

(2) the development of a system by which information developed by TxDOT and TWC may be exchanged to their mutual benefit.

(b) The memorandum of understanding follows as Exhibit A-23.

EXHIBIT A-23

MEMORANDUM OF UNDERSTANDING
BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION
AND THE TEXAS WATER COMMISSION

I. NEED FOR AGREEMENT

- A. It is the practice of the Texas Department of Transportation (TxDOT) to
1. investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;
 2. base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;
 3. complete public involvement and use a systematic interdisciplinary approach as essential parts of the development process for transportation projects; and
 4. mitigate for project impacts where such mitigation is feasible and prudent and where such mitigation is agreed upon by appropriate agencies, while providing an environmentally sound highway system.
- B. It is the policy of the State of Texas and the purpose of the Texas Surface Water Quality Standards to maintain the quality of water in the state consistent with the public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state; to encourage and promote development and use of regional and areawide wastewater disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.
- C. By statute, TxDOT shall adopt a memorandum of understanding with each state agency that has responsibility for the protection of the natural environment of the state (Section 3, Article 6673g, Texas Civil Statutes).
- D. By statute, the Texas Water Commission (TWC) may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between the commission and any other state agency (Section 5.104, Texas Water Code).
- E. In order to fulfill these directives and to pursue and coordinate the goals of the TxDOT and the Texas Water Commission, these agencies have agreed to develop a Memorandum of Understanding (MOU) with the intention of providing a formal mechanism by which the TWC can review TxDOT projects which have the potential to affect natural resources within the jurisdiction of the TWC, and of providing for the creation of a system by which information developed by the TxDOT and the TWC may be exchanged to their mutual benefit.
- F. The rules for coordination of state-assisted transportation projects developed by the TxDOT and published in the June 11, 1991, *Texas Register* (16 TexReg 3197) underline the need for and importance of comprehensive environmental coordination for all transportation projects.

II. DEFINITIONS

- A. 7Q2: Seven-day, two-year low flow. The lowest flow that occurs for seven consecutive days during a two-year period as statistically determined from historical data. It is the flow used for determining the allowable discharge load to a stream.
- B. Construction: Activities which involve the building of highway facilities on a new location, or the expansion, rehabilitation, or reconstruction of an existing facility.
- C. Edwards Aquifer Recharge Zone: That area at the ground surface where the water-bearing units of the Edwards Aquifer outcrop as delineated by the TWC on official recharge zone maps.
- D. Environmental Documents: Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.
- E. Intermittent Stream: A stream which has a period of zero flow for at least one week during most years. Where flow records are available, a stream with a 7Q2 flow of less than 0.1 cfs is considered intermittent.
- F. Intermittent Stream with Perennial Pools: Streams which may have periods of zero flow or a 7Q2 flow of less than 0.1 cfs, but which maintain perennial pools which create significant aquatic life uses.
- G. Maintenance: Activities which involve the repair or preservation of an existing facility to prevent that facility's disintegration to an unsafe or irreparable state, or which involve the treatment of an existing facility or its environs to meet acceptable standards of operation or aesthetic quality. Such activities generally do not require the acquisition of additional right-of-way.
- H. Memorandum of Understanding: A formal document which outlines the relationship between agencies or parties, including the responsibilities and jurisdiction of each party, and which sets forth within its provisions agreements between the parties.
- I. Mitigation: A technique or means of reducing impacts to the natural environment, including avoidance, minimization, and compensation.
- J. National Environmental Policy Act of 1969: Known as NEPA, this is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. NEPA is binding upon federal agencies, including the Federal Highway Administration, and is usually followed as an environmental guideline by state and local agencies. In this document, NEPA includes the Act itself and its subsequent amendments.
- K. NPDES: The National Pollutant Discharge Elimination System, under which the Administrator of the U.S. Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402 of the Federal Water Pollution Control Act.
- L. Perennial Stream: A stream which does not have a period of zero flow for greater than one week or for which the 7Q2 flow is greater than 0.1 cfs.
- M. Project Development: The planning process of a highway project, which includes engineering design as well as environmental studies and public involvement procedures. Project development generally includes all aspects of a project prior to actual construction.

N. Public Involvement: An ongoing phase of the project planning process which encourages and solicits public input, and seeks to provide the public the opportunity to become fully informed regarding project development.

O. Right-of-Way: The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.

P. Texas Water Code: State statute which gives the Texas Water Commission authority to regulate water quality in Texas.

Q. Wetland: As defined in Texas Civil Statutes Article 5421u, "wetlands" means land that: a) has a predominance of hydric soils; b) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and c) under normal circumstances does support a prevalence of such vegetation. Wetlands generally include swamps, marshes, bogs, potholes, and similar areas.

III. RESPONSIBILITIES

A. Texas Department of Transportation

1. The responsibilities of the TxDOT pertain primarily to its functions as a transportation agency, and include the following:

(a) planning and designing safe, efficient, cost-effective, and environmentally sound transportation facilities, and avoiding, minimizing, or compensating for environmental impacts as far as practicable;

(b) the timely and efficient construction of transportation facilities, executed in a manner consistent with approved plans or agreements which have been entered into by the department for the protection of the natural environment; and

(c) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the travelling public, and dedication to the protection of natural resources within the jurisdiction of the TxDOT.

(d) TxDOT has made a commitment to the preservation and enhancement of the human environment.

2. Article 6673g, Texas Civil Statutes directs the TxDOT to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archaeological resources.

B. Texas Water Commission

The responsibilities of the TWC relate primarily to its function as a natural resource management agency. TWC is charged with the protection of the quality of water in the state of Texas. Its jurisdiction and responsibilities, as outlined in Vernon's Texas Code Annotated, Water Code, Section 5.013, include:

1. water and water rights, including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;
2. the state's water quality program, including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;
3. the determination of the feasibility of certain federal projects;
4. the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;
5. the administration of the state's programs involving underground water and water wells; and
6. any other areas assigned to the commission by this code and other laws of this state.

IV. PROVISIONS

A. The TxDOT shall furnish, upon completion of review by TxDOT's Division of Highway Design, Environmental Section (D-8E) and prior to the initiation of the appropriate public involvement phase, environmental documentation to be reviewed by the TWC for all projects meeting the criteria for coordination, as outlined in this section.

1. bridge construction projects on new locations,
2. projects which traverse or encroach upon perennial streams, intermittent streams with perennial pools, rivers, lakes, tidally influenced waters, or wetlands,
3. projects on the recharge zone of the Edwards Aquifer,
4. all projects processed as Environmental Impact Statements (EIS), and
5. proposals for mitigation of water quality impacts.

B. The level of environmental documentation prepared and provided to TWC will be in compliance with NEPA, TxDOT environmental rules, and other state laws, rules, and regulations, and as outlined in TxDOT's Highway Design Division Operations and Procedures Manual, Part II-B. This documentation includes, but is not limited to, categorical exclusion assessments, environmental assessments, and environmental impact statements.

C. The TWC shall have a period of 30 days from the date of receipt to review the project's environmental documentation. The TWC may, if necessary, submit a written request to extend the review period for a maximum of 30 days. The reasons for requesting the review extension must be included in any such request. Any comments submitted by the TWC subsequent to review must be considered by the TxDOT.

D. **Water Pollution Abatement Plans.** For projects on the recharge zone of the Edwards Aquifer, as defined by applicable laws and regulations, the TxDOT shall process and submit a Water Pollution Abatement Plan (WPAP) according to the provisions of Edwards Aquifer Rules (31 TAC 313). In addition to these rules, the following conditions will be added in order to facilitate and streamline this process.

1. When constructing or maintaining roadways on the recharge zone of the Edwards Aquifer, the TxDOT shall seek to avoid, and then to minimize to the extent practicable, impacts to surface water which could degrade the quality of water entering the aquifer.

2. The TWC shall weigh all factors in the review process including the significance of the impact to water quality, the cost of mitigation, and public interest. The conditions of approval should reflect these factors.

3. In order to reduce the paperwork and to minimize the workload on each agency's staff, the TWC shall list a category of specific, highway-related actions for which there is little or no significant impact to water quality and which therefore will be treated as categorical exclusions.

4. The TxDOT, in consultation with the TWC, shall formulate specific design features and maintenance practices to be implemented on a consistent basis to further eliminate the need to coordinate a specified category of actions. This will be in the form of an agreement and shall be added to this MOU at a later date.

E. Water Quality Certification. Section 401 of the Clean Water Act requires certification from the TWC that the applicant for a federal permit affecting state waters is within the water quality standards for the state of Texas. The current coordination process for TxDOT projects is the issuance of a joint public notice by the federal agency to the greatest extent possible. This process will remain unchanged if possible.

F. Petroleum Storage Tank Removal. Issues concerning underground storage tank inspection and removal will continue to be handled according to the provisions of 31 TAC Chapter 334.

G. Hazardous Materials. Hazardous waste facilities assessment and remediation will continue to be done in accordance with 31 TAC Chapter 335.

H. National Pollutant Discharge Elimination System (NPDES) Program. If the TWC should assume NPDES authority, existing TxDOT permits will be subject to the TWC NPDES implementation policy.

I. Interagency Committee. TxDOT and TWC will form an interagency committee to begin development of a Water Quality Management Plan for Nonpoint Source Pollution (see item J). This interagency committee may include other natural resource agencies as deemed appropriate by both TxDOT and TWC. Following completion of the Water Quality Management Plan, the interagency committee will remain intact to address future areas of mutual interest between TxDOT and TWC which are not addressed in this memorandum.

J. Water Quality Management Plan for Nonpoint Source Pollution. Within 60 days of the final adoption of this memorandum, following the formation of the interagency committee, TxDOT and TWC will begin to develop the Water Quality Management Plan for Nonpoint Source Pollution. The plan will include, but not be limited to:

1. the review of existing procedures and the development of techniques to control water quality impacts;
2. the education of TxDOT personnel on water quality issues;
3. the development of special provisions to address sensitive areas such as wetlands, public water supplies, and the Edwards Aquifer;

4. a program to increase public awareness;
5. a review of the literature and other documentation in order to prioritize when and where to implement water quality controls; and
6. a provision that the TxDOT will enforce water quality control specifications on each jobsite, as per standard contract language.

V. TRANSFERABILITY

The contents and provisions of this MOU are transferable from the TWC to the Texas Natural Resources Conservation Commission (TNRCC) on September 1, 1993.

VI. REVIEW OF MOU

This memorandum shall be reviewed and updated, at a minimum, every fifth year from the date of signature. The TxDOT and the TWC by rule shall adopt the memorandum and all revisions to the memorandum.

The Texas Department of Transportation

____ Date: _____ Arnold W. Oliver, P.E., Executive Director
The Texas Water Commission

____ Date: _____ Daniel J. Eden, Acting Executive Director

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

Issued in Austin, Texas, on July 7, 1992.

TRD-9209323

Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: August 14, 1992

For further information, please call: (512) 463-8630

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• 43 TAC §2.24

The Texas Department of Transportation (TxDOT) proposes new §2.24, concerning memorandum of understanding with the Texas Historical Commission and the Texas Antiquities Committee. Section 2.24 adopts as Exhibit A a memorandum of understanding among the department, the Texas Historical Commission (THC), and the Texas Antiquities

Committee (Committee) which provides for the review of department projects that have the potential to affect historic properties and cultural resources within the jurisdiction of THC and the Committee, and concerns the development of a system by which information developed by TxDOT, THC, and the Committee may be exchanged to their mutual benefit.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, required the department to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources. Article 6673g also requires the department and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to meet this legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, this new section is being proposed for permanent adoption.

Roland Gamble, P.E., director, division of environmental affairs, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The department is unable to assign an exact cost to the state that will be associated with the increased coordination effort between TxDOT and THC, and the Committee. It is not possible to estimate the cost of additional environmental mitigation and/or enhancement resulting from the proposed section since the

type and extent of mitigation and/or enhancement is related to the scope and extent of specific departmental activities or projects and the anticipated associated environmental impacts. However, it is the department's position that the benefits to the natural environment and the benefits to the public will more than offset the increased coordination and environmental mitigation/enhancement costs associated with administering the proposed new section.

Mr. Gamble also has determined that there will be no effect on local government or small businesses as a result of enforcing the proposed sections, except when cultural resources are encountered during the course of construction. Provisions of this section require that construction be suspended if cultural resources are encountered. Should this occur the resulting delay would affect both the completion date of the project and the total construction cost. Businesses and employees of businesses involved in the construction would be affected. In addition, businesses located in the project area, employees of these businesses, and residents of the project area would also be affected by the suspension of construction as would the traveling public.

Mr. Gamble has certified that there will be no significant impact on local economies or overall employment as a result of administering the proposed new section.

Mr. Gamble 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 increased coordination and communication among the department and the THC, and the Committee resulting from implementation of the memorandum of understanding which will benefit the public by ensuring that the natural environment is preserved to the fullest extent possible and enhanced when practicable.

Comments on the proposal may be submitted to Roland Gamble, P.E., Director, Division of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701. The department and THC, and the Committee will hold a joint public hearing at a future date with notice of the hearing to be published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Articles 6666 and 6673g, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically for the adoption by rule of memoranda of understanding with natural resource agencies.

§2.24. Memorandum of Understanding with the Texas Historical Commission and the Texas Antiquities Committee.

(a) The Texas Department of Transportation (TxDOT) adopts as Exhibit A-24 a memorandum of understanding between TxDOT and the Texas Historical

Commission (THC), and the Texas Antiquities Committee (Committee) concerning:

(1) the review of department projects which have the potential to affect historic properties and cultural resources within the jurisdiction of THC and the Committee, in order to assist TxDOT in making environmentally sound decisions; and

(2) the development of a system by which information held by TxDOT, THC, and the Committee may be exchanged to their mutual benefit.

(b) The memorandum of understanding follows as Exhibit A-24.

EXHIBIT A-24

MEMORANDUM OF UNDERSTANDING

AMONG THE TEXAS DEPARTMENT OF TRANSPORTATION, THE TEXAS HISTORICAL COMMISSION, AND THE TEXAS ANTIQUITIES COMMITTEE

I. NEED FOR AGREEMENT

A. It is the practice of the Texas Department of Transportation (TxDOT) to:

1. investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;
2. base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;
3. complete public involvement and a systematic interdisciplinary approach as essential parts of the development process for transportation projects; and
4. mitigate project impacts to provide environmentally sound roadway projects where such mitigation is feasible and prudent and where such mitigation is agreed upon by appropriate agencies.

B. In order to pursue this policy, the TxDOT, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) have agreed to develop this Memorandum of Understanding (MOU), which will supersede the TxDOT's MOU with the Committee which became effective on January 5, 1972.

C. Senate Bill 352, enacted by the 72nd State Legislature, directs TxDOT to adopt memoranda of understanding with applicable environmental resource agencies.

D. The rules for coordination of state-assisted transportation projects developed by the TxDOT and published in the June 11, 1991 *Texas Register* (16 TexReg 3197) underline the need for and importance of comprehensive environmental coordination for all transportation projects.

E. It is the intent of this MOU to provide a formal mechanism by which the THC and the Committee may review TxDOT projects which have the potential to affect historic properties (cultural resources) within the jurisdiction of the THC and the Committee, and to develop a system by which information held by the TxDOT, the THC, and the Committee may be exchanged to their mutual benefit.

II. DEFINITIONS

A. Antiquities Code of Texas (ACT): Designates the Texas Antiquities Committee as the legal custodian of all cultural resources, historic and prehistoric, within the public domain of the State of Texas, and the body which issues antiquities permits, in accordance with 13 TAC Chapter 41 and as provided in ACT Sections 191.054 and 191.091-098.

B. Antiquities Permit: A permit issued by the Texas Antiquities Committee in order to regulate site destruction, archeological testing, and archeological excavation.

C. Archeological Excavation (Data Recovery): Use of field techniques, including those of archeological testing, but with the goal of addressing specific research issues identified with the site's historic context.

- C. Archeological Excavation (Data Recovery): Use of field techniques, including those of archeological testing, but with the goal of addressing specific research issues identified with the site's historic context. Excavation (data recovery) is conducted under an approved data recovery plan developed in consultation with the State Historic Preservation Officer and The Advisory Council on Historic Preservation, following the procedure set forth under 36 CFR 800, for federal undertakings; or in consultation with the Texas Antiquities Committee for non-federal undertakings, in accordance with 13 TAC Chapter 41.
- D. Archeological Monitoring: Use of a professional archeologist present on-project when clearing and grubbing or other construction activities are being conducted. Should evidence of archeological remains be encountered, TxDOT will ensure that clearing and grubbing or other construction activities shall cease in the area of the archeological remains until these remains can be assessed and evaluated in accordance with appropriate state and federal laws and regulations.
- E. Archeological Resource/Site: Locations where prehistoric or historic remains are found in a primary deposit, excluding extant standing structures dating from the historic time period. Note that archeological sites can be associated with a historic structure and historic structural ruins can be designated as archeological sites (TAC Rules Chapter 41 Subsection 5). However, an extant standing structure itself (as contrasted to a historic structural ruin) does not constitute an archeological site in the absence of other associated remains. Prehistoric ruins are considered to be archeological sites.
- F. Archeological Survey: Archeological field methods used to locate archeological remains, including on-foot examination of the surface, shovel testing, and subsurface trenching by mechanical means where appropriate.
- G. Archeological Testing: Use of field techniques including excavation of holes larger or deeper than those of a shovel test, and including mechanical trenching and removal of artifacts. Archeological field research limited to determination of eligibility for the National Register of Historic Places for federal undertakings, as defined in 36 CFR 800, or determination of significance for non-federal undertakings, as defined in 13 TAC Chapters 41-45. The review agency will determine what level of testing is appropriate under the MOU. The Committee will determine when test phase investigations warrant an antiquities permit.
- H. Committee: Means the Texas Antiquities Committee.
- I. Cultural Resources: A general term synonymous with "Historic Properties."
- J. Eligibility: A site's eligibility for the National Register of Historic Places (NRHP) as set forth in 36 CFR 800.
- K. Environmental Documents: Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.
- L. Historic Property: Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NRHP), as defined in 36 CFR 800.2.
- M. Historic Resource: A feature of the built environment which is potentially eligible for listing in the NRHP as defined in 36 CFR 60.
- N. Historic Resource Survey: Examination of the project for the presence of historic resources.
- O. Mechanical Testing: Excavation with backhoe, Gradall, or other heavy equipment in order to locate archeological remains.

P. Project Development: The planning process of a highway project, which includes engineering design as well as environmental studies and public involvement procedures. Project development generally includes all studies of a project prior to actual construction.

Q. Review Agency: The appropriate review agency for each particular circumstance. The Texas Historical Commission (THC) has jurisdiction over federal undertakings, as defined in 36 CFR 800, and the Texas Antiquities Committee (Committee) has jurisdiction over non-federal undertakings and the issuing of antiquities permits, as provided in ACT Sections 191.054 and 191.091-098.

R. Right-of-Way: The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.

S. Shovel Testing: Excavation of test holes which shall measure at least 35 cm in diameter and shall be excavated to a basal horizon or bedrock, or to a depth of at least 1 m if a basal horizon or bedrock is not reached. This technique is used both in areas where surface visibility is low and in areas where the potential for archeological remains is high. Shovel testing is also used when surface indications of archeological remains are encountered in order to provide a preliminary determination of the depth of the cultural deposits.

T. State Archeological Landmark: Archeological and historic properties as defined in Subchapter D of the Antiquities Code of Texas (ACT) and identified in accordance with 13 TAC Chapter 41 and 13 TAC Chapter 45.

U. Subsurface Survey: Mechanical or hand-dug probing of a site or project area during the survey phase to record or examine subsurface deposits, for the collection of archeological or geomorphic data.

III. RESPONSIBILITIES

A. Texas Department of Transportation

1. The responsibilities of the TxDOT pertain primarily to its functions as a transportation agency, and include the following:

(a) planning and designing safe, efficient, cost-effective, and environmentally sound transportation facilities, and avoiding, minimizing, or compensating for environmental impacts as far as practicable when they are anticipated to occur;

(b) the timely and efficient construction of transportation facilities, executed in a manner consistent with approved plans or agreements which have been entered into by the department for the protection of the natural environment and cultural sites; and

(c) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the travelling public, and dedication to the protection of natural and cultural resources within the jurisdiction of the TxDOT.

(d) TxDOT has made a commitment to the preservation and enhancement of the human environment.

2. Senate Bill 352, which became effective on September 1, 1991, directs the TxDOT to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources.

B. Texas Historical Commission

The Texas Historical Commission, through the office of the State Historic Preservation Officer (SHPO), regulates the disposition and management of historic properties which are affected by federal undertakings, as described in the National Historic Preservation Act, Section 106, and in 36 CFR 800.

C. Texas Antiquities Committee

1. The Texas Antiquities Committee regulates the disposition and management of archeological landmarks which are affected by non-federal undertakings, as described in the Antiquities Code of Texas and 13 TAC Chapter 41.
2. The Texas Antiquities Committee issues permits for the taking, excavation, restoration, or study of state archeological landmarks as provided in ACT Sections 191.054 and 191.091-098.

IV. PROVISIONS

A. Procedures for Coordination Regarding Archeological Resources

1. Initial Coordination Phase

(a) TxDOT may combine the initial coordination phase with the archeological survey phase (see item IV.A.2) in order to expedite project coordination. In these cases, the review agency will be afforded an opportunity to comment on both the survey methodology and survey results.

(b) TxDOT will identify projects requiring coordination for archeological resources, as indicated by the level of project documentation. Such projects include:

- i. any project which, although classified as a categorical exclusion (CE), is judged to have the potential to affect archeological resources;
- ii. all projects requiring issuance of a Finding of No Significant Impact (FONSI), when such a project is judged to have the potential to affect archeological resources; and
- iii. all projects requiring an Environmental Impact Statement (EIS).

(c) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide the THC and the Committee with a list of such projects on a monthly basis.

(d) The TxDOT will begin coordination by conducting a search of the site files at the Texas Archeological Research Laboratory (TARL) as well as site files and survey records held at the THC and the Committee. The THC and the Committee will render TxDOT all reasonable assistance in the search.

(e) TxDOT will request a review of the project by the review agency. TxDOT will submit for review:

- i. plans, project descriptions, and other documentation required by the review agency for review;
- ii. a statement detailing the result of the site files search, including information on any sites listed in the site files and occurring on or near the project, including a list of prop-

erties on or near the project which are listed in the National Register of Historic Places, or are designated as State Archeological Landmarks (SALs); and

iii. a statement recommending which portions of the project are to be surveyed, the techniques to be used on each part of the project, and identifying the portions of the project which have a high likelihood of yielding archeological remains.

(f) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will include:

i. a statement of concurrence or non-concurrence with the results of the site files check and the survey recommendations contained in the TxDOT request for review, and

ii. any other comments relevant to the archeological resources which could be affected by the project.

(g) TxDOT will include the results of the site files search, survey recommendations, and comments received from the review agency in any environmental assessment or Draft EIS written as part of the project, and will present the findings at the public hearing, if such hearing is held.

2. Archeological Survey Phase

(a) All projects, and portions of projects, recommended for survey by the TxDOT and for which concurrence has been obtained from the review agency during the initial phase of coordination will be the subjects of archeological survey using the methods agreed upon between the TxDOT and the review agency.

(b) An archeological survey will be conducted by a member of the TxDOT professional archeological staff or other archeologist approved by the review agency.

(c) When the archeological survey has been completed, the TxDOT will request a review of the results of the survey. With its request for review, the TxDOT will include:

i. a letter report or form detailing the results of the survey, including a discussion of any deviations from the methods agreed upon during the initial phase of coordination;

ii. the project location plotted on 7.5' Series USGS quadrangle maps;

iii. copies of archeological site survey forms for any new archeological sites discovered during survey;

iv. copies of archeological site survey forms for any previously recorded archeological sites; and

v. recommendations regarding archeological testing or archeological monitoring.

vi. If deemed necessary, the review agency may request TxDOT to produce a formal report of findings made as a result of a survey phase investigation.

(d) The review agency will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

i. a statement of concurrence or non-concurrence with the results of the site files check and the survey results contained in the TxDOT request for review, and

ii. any other comments relevant to the archeological resources which could be affected by the project.

(e) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or Final EIS, if one is prepared.

3. Archeological Testing Phase

(a) All sites and portions of sites recommended for testing by the TxDOT, the THC, or the Committee will be the subjects of archeological testing, using the methods agreed upon by the TxDOT and the review agency.

(b) The review agency may send a representative to observe any or all of the testing procedures.

(c) At the completion of testing, the TxDOT will prepare a formal report of the results of testing.

i. For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 CFR 800.

ii. For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as a State Archeological Landmark is warranted, in accordance with ACT, Sections 191.091-.092, and 13 TAC Chapters 41-45.

(d) TxDOT will send the testing report to the review agency with a request for review.

(e) The THC, in accordance with 36 CFR 800, will respond to the report within 30 days of receipt of the TxDOT request for review. The response will include:

i. a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

ii. a determination of the site's eligibility for listing in the National Register of Historic Places; and

iii. any other comments relevant to the archeological site which has undergone archeological testing.

(f) The Committee, in accordance with 13 TAC Chapter 41 and ACT Section 191, will respond to the report within 60 days of receipt of the TxDOT request for review. The response will include:

i. a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

ii. a determination of whether the site warrants designation as a State Archeological Landmark; and

iii. any other comments relevant to the archeological site which has undergone archeological testing.

(g) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or Final EIS, if one is prepared.

(h) The Committee may require an antiquities permit be issued for some test phase investigations if the scope of the investigations warrants it. All testing performed by non-TxDOT staff archeologists must be performed under an antiquities permit.

4. Archeological Excavation/Data Recovery

(a) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or significant (for non-federal undertakings) based on consultation with the review agency during the survey phase or testing phase will be the subjects of data recovery.

(b) TxDOT (or their contracted agent), in consultation with the review agency, will develop a suitable data recovery plan for each eligible or significant archeological site on a case-by-case basis, in accordance with 36 CFR 800 for federal undertakings and ACT Section 191 for non-federal undertakings. Final data recovery plans must be approved by the review agency prior to their implementation.

(c) Results of data recovery will be published as required by 36 CFR 800 and/or ACT Section 191.

5. Archeological Sites Found After Award of Contract

(a) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction that would affect the site.

(b) A TxDOT archeologist will examine the remains and report the findings to the appropriate review agency. The Federal Highway Administration (FHWA) will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 CFR 800.

(c) TxDOT and the review agency will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site.

(d) TxDOT may continue construction in the affected area upon approval of the review agency.

B. Procedures for Coordination Regarding Historic Resources

1. TxDOT will identify projects requiring coordination with the review agency for historic resources. Coordination will be required for:

(a) any project which, although classified as a CE, is judged to have the potential to affect historical resources;

(b) any project requiring the issuance of a FONSI, when such project is judged to have the potential to affect historic resources;

(c) all projects requiring an EIS.

2. TxDOT will identify which projects require individual coordination for historic resources. The TxDOT will provide a list of those projects which do not require individual coordination to the THC and Committee on a monthly basis.

3. For projects requiring individual coordination, TxDOT will conduct a search of available records, references, and resources, including listings of Registered Texas Historic Landmarks (RTHLs), State Archeological Landmarks (SALs), and properties listed in the National Register

of Historic Places (NRHP), as well as local historic property survey files on record at the THC. The THC and Committee will render all reasonable assistance to the TxDOT in the search.

4. TxDOT will conduct historic resources surveys to locate historic resources which are potentially eligible for inclusion in the National Register of Historic Places.

5. For each project requiring individual historic resources coordination with the review agency, TxDOT will provide the following:

(a) plans, project descriptions and other documentation as needed;

(b) a statement detailing the results of the records search;

(c) a summary of the results of the historic resources survey, describing all resources

i. listed in or potentially eligible for listing in the NRHP for federal undertakings, or

ii. which possess historical interest as defined by ACT Section 191.092 for non-federal undertakings.

6. The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will be in accordance with 36 CFR 800, ACT Chapter 191, and 13 TAC Chapter 41.

7. TxDOT will include information on historic resources in the environmental assessment or Draft EIS, and will present these findings at the public hearing, should one be held.

8. TxDOT will include information on historic resources in the environmental assessment or Final EIS, if one is prepared.

9. All historic resources either listed in or determined eligible for listing in the NRHP (for federal undertakings) or designated as SALs (for non-federal undertakings) which are affected by projects will be subject to mitigation of these effects.

10. TxDOT, in consultation with the review agency, will develop a suitable mitigation plan:

a. in accordance with 36 CFR 800 for historic resources listed in or determined eligible for listing in the NRHP for federal undertakings, or

b. in accordance with ACT Chapter 191 for historic resources designated as SALs for non-federal undertakings. Final mitigation plans must be approved by the review agency prior to implementation of mitigation efforts.

C. Artifact Recovery and Curation

1. Artifact Recovery

(a) All artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents must be cleaned, labeled, and processed in preparation for long-term curation.

(b) Recovery methods must conform to 36 CFR 800, Committee Rules, and/or Council of Texas Archeologists (CTA) guidelines to ensure proper care and curation. _

2. Artifact Curation

(a) TxDOT may temporarily house artifacts and samples during their laboratory analysis research, but all artifacts must be transferred to a permanent curatorial facility within a reasonable time period, to be decided by the review agency.

(b) All artifacts and samples must be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 CFR 800, Committee Rules, or CTA Curation Standards, as approved by the review agency.

(c) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 CFR 79, Committee Rules, or CTA Curation Standards, as approved by the review agency.

V. DISPUTE RESOLUTION

A. In such instances when TxDOT and the review agency are unable to reach a mutually agreeable plan of action regarding survey, testing, determination of eligibility or significance, or mitigation, a good-faith effort will be made to develop a compromise plan.

B. If TxDOT and the review agency cannot arrive at a compromise plan, the dispute will be resolved in accordance with procedures established under State and Federal rules.

1. Federal undertakings will follow the procedures provided in 36 CFR 800, including consultation with the Advisory Council on Historic Preservation, if necessary.

2. Non-federal undertakings will follow the procedures provided in 13 TAC Chapters 41-45.

VI. REVIEW OF MOU

This memorandum shall be reviewed and updated no later than January 1, 1997, and every fifth year after that date, as provided for in SB 352 and Article 6673g, Section 3(d) of Vernon's Texas Civil Statutes.

The Texas Department of Transportation

Date: _____ Arnold W. Oliver, P.E., Executive Director The Texas Historical Commission

Date: _____ Curtis Tunnell, Executive Director The Texas Antiquities Committee

Date: _____ Karl Komatsu, Chairman

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 July 7, 1992.

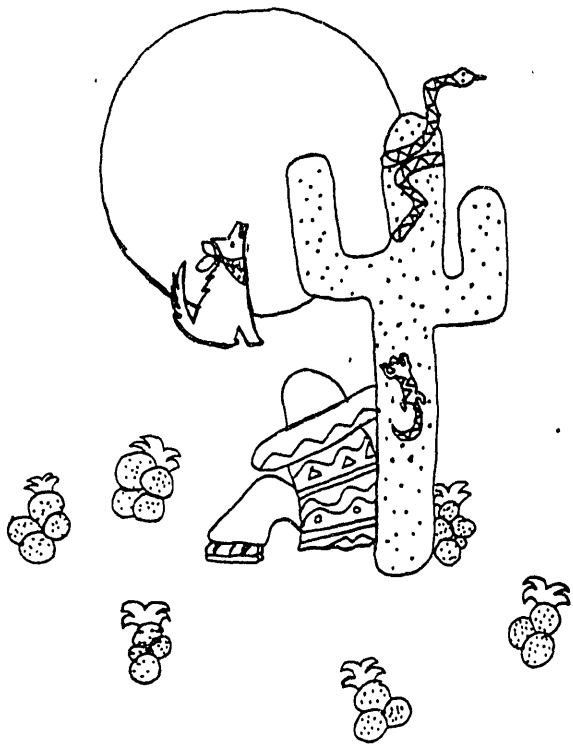
TRD-9209323

Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

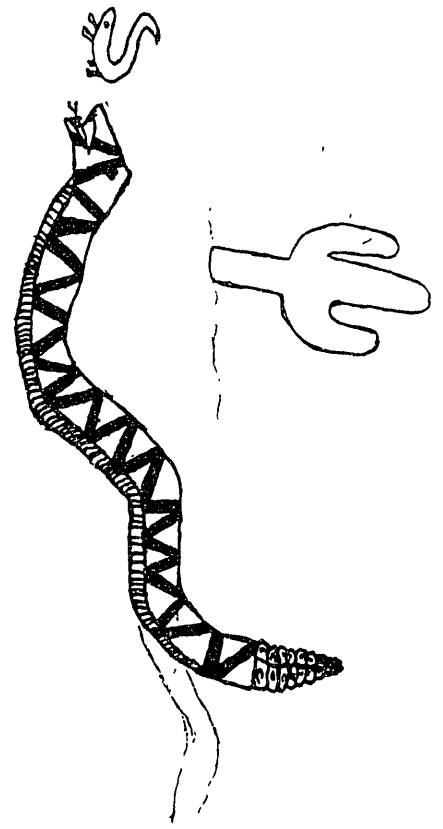
Earliest possible date of adoption. August 14, 1992

For further information, please call: (512) 463-8630





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7-12

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 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Dental Laser Use

• 22 TAC §§109.301-109.304

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption a proposed new §§109.301-109.304 which appeared in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2088). The effective date of this withdrawal is July 29, 1992.

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

TRD-9210375

Mel Ling Clendennen
Administrative Secretary
State Board of Dental
Examiners

Effective date: July 29, 1992

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

Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Professional and Technical Standards

• 22 TAC §663.20

The Texas Board of Professional Land Surveying has withdrawn from consideration for

permanent adoption a proposed new §663.20 which appeared in the June 16, 1992, issue of the *Texas Register* (17 TexReg 4328). The effective date of this withdrawal is July 30, 1992.

Issued in Austin, Texas, on July 30, 1992

TRD-9210407

Sandy Smith
Executive Director
Texas Board of
Professional Land
Surveying

Effective date: July 30, 1992

For further information, please call: (512) 452-9427

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.21

The Texas Youth Commission has withdrawn from consideration for permanent adoption a proposed amended §85.21 which appeared in the July 31, 1992, issue of the *Texas Register* (17 TexReg 5343). The effective date of this withdrawal is August 21, 1992.

Issued in Austin, Texas, on July 31, 1992

TRD-9210513

Gail Graham
Policy and Manuals
Coordinator
Texas Youth Commission

Effective date: August 21, 1992

For further information, please call: (512) 483-5244

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 253. State Aging Plan

• 40 TAC §253.3

The Texas Department on Aging has withdrawn from consideration for permanent adoption a proposed new section which appeared in the June 26, 1992, issue of the *Texas Register* (17 TexReg 4601). The effective date of this withdrawal is July 31, 1992.

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

TRD-9210477

Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: July 31, 1992

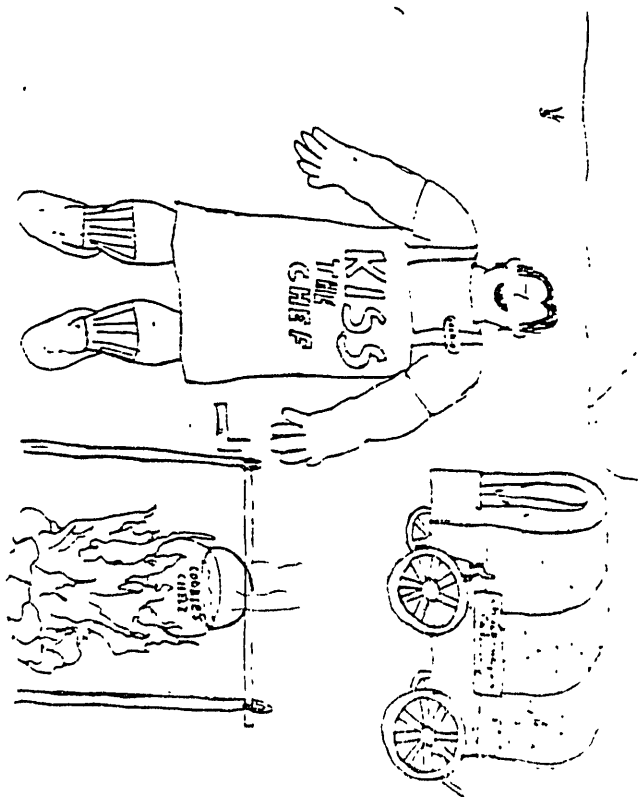
For further information, please call: (512) 444-2727



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Adopted Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 17. Marketing and Development Division

• 4 TAC §§17.80-17.87

The Texas Department of Agriculture adopts new §§17.80-17.87, concerning standards for "Naturally Texas" products, without changes to the proposed text as published in the June 23, 1992, issue of the *Texas Register* (17 TexReg 4506).

The new sections establish a voluntary natural fiber marketing promotion to promote the sales of Texas grown and processed natural fibers, and to promote the sale of natural fiber value-added products manufactured in Texas.

The new sections provide definitions; provide requirements and procedures for filing an application to use the "NATURALLY TEXAS" mark; state a basis for denial of an application; establish a register of approved applicants; provide for annual registration and for payment of a registration fee; and provide procedures for termination of permission to use the "NATURALLY TEXAS" mark.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Agriculture Code, §12.002, which provides the Texas Department of Agriculture with the authority to encourage the proper development of agriculture, horticulture, and related industries; §12.016, which provides the department with the authority to adopt rules as necessary for the administration of §12.002; and §12.0175, which provides that if the department establishes a program to promote products grown in the state or products made from ingredients grown in the state, the department may set by rule and collect a fee from each producer that participates in the program.

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 July 30, 1992.

TRD-9210505 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: August 8, 1992

Proposal publication date: June 23, 1992

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

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Department of Housing and Community Affairs

Chapter 49. Low-Income Rental Housing Tax Credit Rules

• 10 TAC §§49.1-49.14

The Texas Department of Housing and Community Affairs adopts new §§49.1-49.14, concerning low-income rental housing tax credit rules, without changes to the proposed text as published in the May 15, 1992, issue of the *Texas Register* (17 TexReg 3529).

The new rules are adopted to established procedures for administering the department's Low-Income Rental Housing Tax Credit Program.

The new sections provide procedures for allocation, by the department, of certain low-income rental housing tax credits available under federal income tax laws to owners of qualified low-income rental housing projects, thereby enhancing the state's ability to provide safe, decent, and sanitary housing for Texans.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4413(501), which provide the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provides this department with the authority to make housing credit allocations in the State of Texas.

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 July 29, 1992.

TRD-9210377 Susan J. Leigh
Executive Director
Texas Department of
Housing and
Community Affairs

Effective date: August 19, 1992

Proposal publication date: May 15, 1992

For further information, please call: (512) 475-3917

TITLE 22. EXAMINING BOARDS

Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Ethical Standards

• 22 TAC §663.1

The Texas Board of Professional Land Surveying adopts an amendment to §663.1, ethical standards, without changes to the proposed text as published in the June 16, 1992, issue of the *Texas Register* (17 TexReg 4327).

The amendment outlines methods that registrants must use to notify clients of the board's name, address, and telephone number for the purpose of directing complaints to the board.

Service recipients will have the name, address, and telephone number of the board if they wish to file a complaint.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this 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 July 29, 1992.

TRD-9210404 Sandy Smith
Executive Director
Texas Board of
Professional Land
Surveying

Effective date: September 1, 1992

Proposal publication date: June 16, 1992

For further information, please call: (512) 452-9427

Professional and Technical Standards

• 22 TAC §§663.13, 663.15-663.19

The Texas Board of Professional Land Surveying adopts new §§663.13, and 663.15-663.19, concerning professional and technical standards. Section 663.19 is adopted with changes to the proposed text as published in the June 16, 1992, issue of the Texas Register (17 TexReg 4328). Sections 663.13, 663.15, 663.16, and 663.18 are adopted without changes and will not be re-published.

The new sections are adopted to implement the Professional Land Surveying Practices Act, §9 and to provide the public with reliable surveying services. In §663.19(2)(g) and (h) the word "sited" has been changed to "cited." These were inadvertent typographical errors Rule §663.20 was withdrawn due to controversy.

The rules will prescribe minimum standards for professional surveyors, thus providing the public with a better surveying product.

Thirteen comments were received. No comments were received regarding §§663.13-663.19. Comments were all regarding §663.20. Proposed §663.20 is currently being withdrawn.

The name of groups and associations making comments for and against the section are as follows: for: Texas Society of Professional Surveyors-§§663.13-663.19; against: Texas Society of Professional Surveyors-§663.20 (withdrawn).

The Texas Board of Professional Land Surveying agreed with comments and withdrew §663.20.

The new sections are adopted under Texas Civil Statutes, Article 5282c, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

§663.19. Plat/Description/Report. For the purposes of these rules the word "report" shall mean any or all of the following survey plat, descriptions, or separate narratives.

(1) All reports shall delineate the relationship between record monuments and the location of boundaries surveyed, such relationship shall be shown on the survey plat, if a plat is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(2) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identi-

fication of the location of such boundaries and shall describe all pertinent monuments found or placed.

(3) Every survey plat prepared shall be to a convenient scale and shall provide a definite and unambiguous representation of the location of the surveyed land according to its record description. Where material discrepancies are found between the record and the conditions discovered, the surveyor shall apprise his/her client in the following manner:

(A) if a plat of survey is prepared, the surveyor shall:

(i) make specific reference to the discrepancy on the plat of survey, or

(ii) make a general reference to the discrepancy on the plat of survey and a specific reference to a report of survey which more specifically describes the discrepancy.

(B) if a survey plat is not prepared, the surveyor shall notify his/her client of any material discrepancy by report of survey or other written notice.

(4) Courses shall be referenced by notation upon the survey plat to an identifiable line for directional control.

(5) The survey plat shall bear the name of the land surveyor responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Stamps)), and date surveyed

(6) Boundary monuments found or placed by the surveyor shall be described upon the survey plat, including those controlling monuments to which the survey may be referenced. The surveyor shall note upon the survey plat which monuments were found and which monuments were placed as a result of his/her survey.

(7) A reference shall be cited on the plat to the record instrument which defines the location of adjoining boundaries.

(8) When appropriate, reference shall be cited in the description prepared to the record instrument which defines the location of adjoining boundaries.

(9) If any report consists of more than one part, each part shall note the existence of the other part or parts.

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 July 29, 1992.

TRD-9210406

Sandy Smith Executive Director Texas Board of Professional Land Surveying

Effective date: September 1, 1992

Proposal publication date: June 16, 1992

For further information, please call: (512) 452-9427

Chapter 664. Continuing Education

• 22 TAC §§664.3, 664.4, 664.7, 664.8, 664.9, 664.11

The Texas Board of Professional Land Surveying adopts amendments to §§664.3, 664.4, 664.7, 664.8, 664.9, and 664.11, without changes to the proposed text as published in the June 16, 1992, issue of the Texas Register (17 TexReg 4329).

The amendments are adopted to implement the requirements required in the Professional Land Surveying Practices Act, §17.

The benefits of enforcing the sections as adopted will be better educated registered professional land surveyors.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5282c, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this 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 July 29, 1992.

TRD-9210405

Sandy Smith Executive Director Texas Board of Professional Land Surveying

Effective date: September 1, 1992

Proposal publication date: June 16, 1992

For further information, please call: (512) 452-9427

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Minimum Standards for Approved Narcotic Drug Treatment Programs

The Texas Department of Health (department) adopts amendments to §§229.141-229.142, 229.144-229.147, and 229.150-229.152; new §229.148 and the repeal of existing §229.148. Sections 229.145-229.148 and 229.150 are adopted with changes to the proposed text as published in the March 10, 1992 issue of the Texas Register (17 TexReg 1803). Sections 229.141-229.142, 229.144, 229.151-229.152, are adopted without changes and will not be republished. These sections establish minimum licensing and operating standards for approved narcotic drug treatment programs pursuant to the requirements of the Health and Safety Code (code), Chapter 466.

The amendments update and clarify the existing language. The primary area of change in the amendments is the elimination of the 30-day compliance period, which will in turn eliminate chronic violations of the code and eliminate potential health hazards associated with these violations. Section 229.148 eliminates requirements that are no longer applicable and further defines the roles of program physicians and medical directors, especially in the areas of admitting patients to treatment, determining a patient's addiction, and approving take-home medications. The rules also require stricter adherence to the eight point criteria in assessing patients for take-home medications, enhance physician oversight in the treatment of patients, and prohibit the location of new narcotic treatment programs within a three-mile radius of an existing program.

The following comments were received during the comment period regarding the proposed rules.

COMMENT: Concerning the preamble, several commentors stated that the regulations would necessitate hiring additional staff.

RESPONSE: The department agrees that the regulations could necessitate the hiring of additional staff by some narcotic treatment programs (NTP), but the requirements contained in the proposed rules which may require additional staff have been previously required by federal regulation or currently required by other authorities.

COMMENT: Concerning the preamble, commentors stated that requirements to register/permit with the department and the Texas Commission on Alcohol and Drug Abuse (TCADA) will add an increased expense to the narcotic treatment programs.

RESPONSE: The department agrees but the requirement for permits from this department and the TCADA is established statutorily.

COMMENT: Concerning the preamble, two commentors described the general effect on the economy and judicial system if opiate-addicted patients leave treatment due to new restrictions established by this department.

RESPONSE: The department's response is that the rules are not designed to exclude or deny the treatment of any patient.

COMMENT: Concerning §229.144(c), a commentor stated that reporting a death that may be methadone related was not possible because death certificates to confirm methadone related deaths are not available from the Health Department for five-six weeks and that autopsies on deaths occurring in a hospital require a release from the next of kin.

RESPONSE: The department disagrees since the section addresses the necessity of reporting deaths which may be methadone related, not necessarily confirmed as methadone related. There is no requirement that death certificates be provided to report these deaths.

COMMENT: Concerning proposed §229.145(a)(2), department staff made a recommendation for licensure with the Texas Commission on Alcohol and Drug Abuse (TCADA).

RESPONSE: The department has added a requirement for the NTP to be licensed with the Texas Commission on Alcohol and Drug Abuse (TCADA).

COMMENT: Concerning §229.145(a)(5), two commentors said that increased costs associated with hiring additional counselors might result in patients dropping out and returning to illicit drug use and behavior. Another thought it was inhumane to refuse requested treatment based on this requirement.

RESPONSE: The department disagrees, since this was previously required by the federal law and was omitted in their last revision. It is also required by one of the other licensing agencies. In response to this comment, however, the department has addressed the concern by amending the final §229.145(a)(5) to read "counselors employed" not "full time counselors employed", and permits temporary exemptions to this requirement to permit hiring of additional staff when new patient admissions causes the NTP to exceed the ratio.

COMMENT: Concerning §229.145(a)(6), several commentors agreed with this proposal. One commentor who disagreed stated that certain areas may need more than one clinic due to patient population and the possibility of having a private and public program in the same area. One commentor suggested that this would violate the Texas Free Trade Act. The same commentor questioned whether existing clinics would be grandfathered or a decision made to move one of the clinics.

RESPONSE: The department disagrees because proximity has been one element responsible for the reduced compliance with state and federal regulations, but will exempt existing programs currently operating within the three-mile radius of each other.

COMMENT: Concerning §229.146(a), a commentor expressed concern that "threaten-

ing to violate" the code inhibits the free expression of ideas.

RESPONSE: The department disagrees since it addresses potential violation of the rules rather than the free expression of ideas.

COMMENT: Concerning §229.146(b), a commentor stated that funds would be requested from government agencies if additional personnel were needed to take care of patients from closed clinics. Another commented that requiring a physician to accept patients infringed upon a physician's right to determine who to treat.

RESPONSE: The department agrees since it should not be mandatory that a program treat a patient from a closed program, and in response to the comment, §229.146(b) is amended for clarification.

COMMENT: Concerning §229.147(a), a commentor stated that everyone deserved 30 days to correct violations and that chronic violators would be eliminated on subsequent 30 day extensions.

RESPONSE: The department disagrees as this has contributed to chronic violations and inability of the State Methadone Authority to take effective actions.

COMMENT: Concerning proposed §229.148(a), several commentors stated that the proposal to eliminate transfer patients would unfairly punish and restrict patients who have legitimate and necessary need to transfer. Several also mentioned the added effort and expense of new admission procedures and test.

RESPONSE: The department agrees and has eliminated the proposed subsection (a) and has relettered subsequent subsections.

COMMENT: Concerning proposed §221.148(b), numerous commentors opposed the change to decrease the number of take home doses allowed. Many suggested that twice a week dosing would force unacceptable hardship on those patients who work in jobs such as construction and offshore drilling that require travel away from the treatment center for more than three days. Others mentioned the added expense, time and job interruptions for increased clinic attendance for those who live great distances from the treatment center. Several commentors stated that reducing six-day take home privileges would punish those patients who had earned that right and also would remove an important incentive for patient compliance. In addition some commentors stated that increased restrictions and expenses would result in reduced admissions and higher dropout for those patients who for whatever reasons can't comply. Several commentors stated that careful consideration of the eight point criteria and patient history would be more effective in controlling problems with methadone over dosage and diversion. One commentor suggested restricting methadone take home supplies to a uniform total amount in milligrams.

RESPONSE: The department agrees and has eliminated the proposed subsection (b) and has relettered subsequent subsections. The department disagrees with the final

commentor as doses must be individualized per treatment level.

COMMENT: Concerning proposed §229.148(c), numerous commentors stated that many situations (such as illness, family tragedies and job opportunities) require a faster response time than would be provided by this procedure. One commentor stated that take home exception decisions were best left to the discretion of the physician. Other commentors thought the proposal would be too time-consuming and that a phone call followed by a letter would suffice.

RESPONSE: The department agrees and has made changes to the final §229.148 (a).

COMMENT: Concerning proposed §229.148(d), one commentor expressed concern that this change would restrict obtaining additional methadone supplies in emergency situations.

RESPONSE: The department disagrees, but has made changes to final §229.148(b) for clarification purposes.

COMMENT: Concerning proposed §229.148(e), numerous commentors mentioned the possibility of false positives inherent with this type of urinalysis. Several mentioned the necessity to confirm positive results with more expensive chain of custody testing to assure accurate results and protect the legal liability of the treatment program. Several commentors thought the punishment was too severe since addiction is considered a chronic disorder subject to relapsing patterns of behavior. In addition, several commentors stated that this would place too much clinical reliance on urine tests for patient compliance when other factors were just as important to consider.

RESPONSE: The department agrees and has eliminated the proposed subsection (e).

COMMENT: Concerning proposed §229.148(f), a commentor said the word "consider" was ambiguous.

RESPONSE: The department agrees and has clarified the final §229.148(c) with the words "adhere to".

COMMENT: Concerning proposed §229.148(h), one commentor expressed concern that all patients would be allowed one take home per week regardless of their level of responsibility and the commentor suggested that provisions be made for seven day per week dispensing in all clinics.

RESPONSE: The department agrees, but since this would require a substantive change the department will regulate this in accordance with Title 21, Code of Federal Regulations and has eliminated the proposed subsection (h).

COMMENT: Concerning proposed §229.148(i), one commentor stated that the word "readmitted" implies that the patient has been discharged. The meaning is not clear.

RESPONSE: The department agrees and has made the necessary correction by eliminating the proposed subsection (i).

COMMENT: Concerning proposed §229.148(j), one commentor stated that a

physical disability could be adequately documented by the program physician without consulting an outside physician and that chronic disabilities such as blindness should not require updating.

RESPONSE: The department agrees and has made the necessary correction by eliminating the proposed subsection (j).

COMMENT: Concerning proposed §229.148(k), one commentor stated that consideration be given to patients who must travel great distances from their home to the clinic. In addition several commentors suggested that a one-week limitation on take home exceptions would not be enough to allow for certain situations.

RESPONSE: The department disagrees since travel in and of itself is not considered a hardship. Special requests are considered on an individual basis and the department agrees that the time limit should be increased to two weeks and has made the necessary change in the rules. (See final §229.148(e).)

COMMENT: Concerning proposed §229.148(l), one commentor stated that taking excessive holidays had not been a problem in the past and that consideration should be made for inservice training for counselor and nursing licensure.

RESPONSE: The department disagrees because numerous NTPs had holiday schedules which differed greatly from the state holiday schedule. The department has added clarification to final §229.148(f) to address special patients on methadone doses greater than 100mg or patients in long or short term detoxification or others deemed to be irresponsible patients by the program physician.

COMMENT: Concerning proposed §229.148(q), a commentor expressed desire for more language encouraging access to prenatal care.

RESPONSE: The department agrees and has made the suggested change.

COMMENT: Concerning proposed §229.148(s), a commentor suggested more language requiring a letter from the patient's personal physician stating knowledge of the patient being on methadone, and additional information needed in the patient's chart regarding any outside prescriptions. Another commentor stated that many patients take numerous prescriptions drugs and that documenting each one would be too time consuming.

RESPONSE: The department agrees with the first commentor and has made the suggested change. The department disagrees with the second commentor since lack of such documentation could be harmful to the patient due to potential drug interactions. The program physician needs to be aware of all medications the patient is taking. (See final §229.148(m).)

COMMENT: Concerning proposed §229.148(u), department staff made a recommendation to add a requirement for patients known to be enrolled in more than one NTP at a time.

RESPONSE: The department has added a six month probationary period requiring a

minimum of six days per week attendance for patients known to be enrolled in more than one NTP at a time. (See final §229.148(o).)

COMMENT: Concerning proposed §229.148(v), one commentor questioned whether the first sentence meant a one-year or a permanent restriction. If permanent was intended the commentor was concerned about the rule being in conflict with rehabilitation laws.

RESPONSE: The department agrees and has made the change to clarify this concern. (See final §229.148(p).)

COMMENT: Concerning proposed §229.148(v), one commentor stated that restricting former addicts access to the drug dispensing area conveyed a lack of trust to the staff.

RESPONSE: The department disagrees. A one-year restriction from access is a precautionary measure to prevent possible diversion of methadone and several commentors supported this proposal. (See final §229.148(p).)

COMMENT: Concerning proposed §229.148(x), one commentor suggested that no clients should receive more than 30mg of methadone initially and no more than a total of 40mg of methadone on the first day.

RESPONSE: The department disagrees since doses need to be determined on an individual basis and are dependent upon the physician's diagnosis. (See final §229.148(r).)

COMMENT: Concerning proposed §229.148(y), one commentor agreed with the two-week time period but suggested that depending on circumstances and the eight point criteria, the patient should be allowed to readmit without all the restrictions and requirements of a new admission.

RESPONSE: The department agrees and has made the necessary change to provide for special exemptions. (See final §229.148(s).)

COMMENT: Concerning proposed §229.148(aa), several commentors objected to the added time and expense associated with transcribing patient files into printed format. One commentor suggested issuing citations to offenders. Another commentor requested clarification of what is meant by "transcribe".

RESPONSE: The department agrees and has clarified this requirement. (See final §229.148(u).)

COMMENT: Concerning proposed §229.148(cc), one commentor stated that due to high turnover in clerical and support personnel that requiring notification of any change in employment status would place a burden on the program.

RESPONSE: The department disagrees since regulatory history has demonstrated a need for this information. (See final §229.148(w).)

COMMENT: Concerning proposed §229.148(dd), one commentor stated that the language is vague since there is no counselor "approval" process at the TCADA but a licensing process. Several commentors stated

that certified alcohol and drug abuse counselor (CADAC) training did not adequately address the special problems of opiate addiction and methadone treatment. Another commented that some CADAC's have a history of substance abuse and do not necessarily make good counselors.

RESPONSE: The department agrees that the language needs clarification and has made the necessary change. The department disagrees with the other commentors and, for the sake of uniformity with TCADA requirements, has changed this to require licensing of counselors. (See final §229.148(x))

COMMENT: Concerning proposed §229.148(dd), several commentors suggested that a reference be made to the exemptions from licensing as stated in the TCADA rules.

RESPONSE: The department agrees and the appropriate language has been added. (See final §229.148(x).)

COMMENT: Concerning §229.150(e)(1), two commentors stated that clients should continue to be allowed temporary treatment services on an emergency or exceptional basis from other clinics as allowed in the federal regulations as long as prior coordination and approval is obtained from the home clinic.

RESPONSE: The department agrees at this time and has expanded this provision.

COMMENT: Concerning §229.150(e)(2)(C)(ii)-(vi), as a result of the previous comment department staff recommended a change.

RESPONSE: The department has retained current patient statuses as explained in a previous response.

COMMENT: Concerning §229.150(e)(2)(D)(i), several commentors stated that many patients do not have and are reluctant to obtain a picture I.D. from a government agency and this requirement may prevent some from seeking treatment. Another commenter pointed out that a social security card and medical records do not contain a photograph. Two commentors from border communities suggested that residency cards with photographs be allowed as identification. Several commentors stated that a photograph should not be placed in the patient file or central registry due to privacy issues.

RESPONSE: The department disagrees since the identity of the patient may be important to both the NTP and SMA. This is particularly true in identifying multiple enrollments. There is no requirement that a photo be provided for the central registry, and patient confidentiality is not compromised.

COMMENT: Concerning §229.151(d)(5), one commentor stated that other drugs that are not addictive work better than methadone in the treatment of opiate dependence, such as "Catapres".

RESPONSE: The department disagrees since this is considered by the United States Food and Drug Administration (FDA) as unauthorized use of an approved drug. The commentors were the El Paso Methadone

Maintenance and Detoxification Treatment Center, Austin Travis County Methadone Treatment Program, Corpus Christi Drug Abuse Council, The Center for Health Care Services, Aeschbach and Associates, Texas Clinic, Best Recovery, Toxicology Associates, Huntsville Clinic, Life Management Center, West Texas Counseling and Rehabilitation Program, Narcotics Withdrawal Center, Port Arthur Drug Abuse Program, Drug Dependence Associates, Houston Substance Abuse Clinic, La Hacienda Treatment Center. In addition, numerous individuals commented with one individual opposing the rules in its entirety. All other commentors were not against the rules in their entirety, however they expressed concerns, questions and recommendations.

• 25 TAC §§229.141-229.142.
229.144-229.147, 229.150-229.152

The amendments are adopted under the Texas Health and Safety Code, Chapter 466, which provides for the Texas Board of Health (board) to adopt rules concerning narcotic treatment programs in Texas; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§229.145. *Application, Fees, Permits.*

(a) Application.

(1) A complete narcotic drug treatment application provided by the Texas Department of Health (department) must be submitted to the department to apply for an approved narcotic drug permit to operate a narcotic treatment program (NTP).

(2) A complete application filed in accordance with this subsection for a NTP will be reviewed and evaluated by the department, in accordance with §229.281 of this title (relating to Processing Permit Application Relating to Food and Drug Operation). An application shall not be considered complete until an application for an NTP has been submitted to the Drug Enforcement Administration (DEA), Texas Commission on Alcohol and Drug Abuse (TCADA), and to the Food and Drug Administration (FDA). If the application is denied, the applicant shall have an opportunity for a hearing pursuant to §229.147 of this title (relating to Denial of Application; Suspension or Revocation of Narcotic Drug Permit).

(3) (No change.)

(4) Currently addicted individuals, and individuals with a history of opiate usage (including methadone) within one year of employment application are not eligible for employment in and/or ownership of an NTP.

(5) The number of patients that a clinic is approved to treat is in direct proportion to the number of counselors employed by that clinic. This proportion is a

maximum of 50 patients for each counselor. The NTP may exceed the counselor to patient ratio on a temporary basis to permit hiring of new staff when new admissions cause a ratio imbalance or when current staff leave and must be replaced

(6) New clinics will not be permitted to operate within a three-mile radius of an existing clinic. Existing programs are exempted so that they are not required to relocate.

(b)-(c) (No change)

§229.146. *Failure to Comply.*

(a) The Texas Department of Health (department) may take any action provided in Texas Health and Safety Code (code), Chapter 466, including emergency orders when it appears that a person violated, is violating, or is threatening to violate the code, these sections or an order or permit issued pursuant to the code.

(b) If an emergency order is issued to suspend or revoke the permit of an NTP, the department may notify other NTPs to expect patients so that treatment services for the patients are maintained

(c) (No change.)

§229.147. *Denial of Application, Suspension or Revocation of a Narcotic Drug Permit.*

(a) Failure to comply with any of these sections shall be grounds for denial, suspension or revocation of a narcotic drug permit. If it appears that an applicant or permit holder has failed to achieve or demonstrate compliance with these sections, the applicant or permit holder shall be given written notice of an opportunity for a hearing in accordance with the Texas Department of Health's (department) formal hearing procedures in Chapter 1 of this title (relating to Board of Health), prior to denying the application, or suspending or revoking the permit. If the applicant or permit holder requests a hearing, he/she shall so notify, in writing, the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas, 78756, within 15 days of receipt of the notice of an opportunity for a hearing. If the applicant or permit holder does not request a hearing within the specified time, then the notice of an opportunity for a hearing shall be construed to be a notice of denial of the application, or suspension or revocation of the permit as stated in the notice.

(b) The department may take action under emergency orders of the Health and Safety Code, Chapter 466, to immediately suspend an approved narcotic drug permit when approval is withdrawn from the permit holder by the Food and Drug Adminis-

mit holder by the Food and Drug Administration (FDA) or a registration is revoked by the Drug Enforcement Administration (DEA). The suspension shall be effective until the permit is surrendered, revoked, or reinstated in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to the Board of Health.)

§229.150. Central Registry.

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

(e) Each NTP shall report to the central registry specific information.

(1) Each person admitted as a new patient, readmitted to the same clinic, admitted from another NTP as a permanent transfer patient, transferred to another narcotic maintenance or detoxification program, temporarily transferred to another program, or discharged (terminated) from maintenance or detoxification treatment shall be identified and reported to the central registry located at the Texas Department of Health, Division of Food and Drugs, by telephone on the day the action occurs and written documentation must be submitted within a 24-hour period (or the next state working day immediately following weekends or holidays).

(2) Each NTP's verbal and written report to the central registry shall identify and provide the following information for each patient:

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

(C) action taken identified as:

- (i) new patient (NP); or
- (ii) terminated patient (TP);
- (iii) transfer in-patient (TIP);
- (iv) transfer outpatient (TOP);
- (v) terminated patient (TP);
- (vi) readmitted patient (RP); or
- (vii) temporary transfer patient (TTP); and

(D) patient identification as follows.

(i) The patient must be identified with a current state driver's license containing a photograph of the patient or state-issued identification card containing a photograph of the patient. Photocopies of each of these must be maintained in the patient's file.

(ii)-(iii) (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 July 31, 1992.

TRD-9210473 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: September 1, 1992

Proposal publication date: March 10, 1992

For further information, please call:(512) 458-7248

Synthetic Narcotic Drugs in the Treatment of Drug Dependent Persons

• 25 TAC §229.148

The repeal is adopted under the Texas Health and Safety Code, Chapter 466, which provides for the Texas Board of Health (board) to adopt rules concerning narcotic treatment programs in Texas, and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

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

TRD-9210474 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: September 1, 1992

Proposal publication date: March 10, 1992

For further information, please call.(512) 458-7248

Minimum Standards for Approved Narcotic Drug Treatment Programs

• 25 TAC §229.148

The new section is adopted under the Texas Health and Safety Code, Chapter 466, which provides for the Texas Board of Health (board) to adopt rules concerning narcotic treatment programs in Texas; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§229.148. State Operational Requirements.

(a) All requests for exceptions to the mandatory take-home dosage schedules must be requested in writing, following a request made by telephone or facsimile, and

approved by the State Methadone Authority prior to administering the take-home doses.

(b) When given a take-home dose of medication, a patient may not return to the clinic to ingest that take-home dose as an observed dose. The clinic may dispense only the minimum number of take-home doses of methadone to change a patient's take-home schedule.

(c) Take-home medication may be given only to a patient who is responsible in handling narcotic drugs. Before the program physician reduces the frequency of a patient's clinic visits, the program physician or an appropriately trained health-care professional supervised by the admitting program physician shall record the specific rationale for the decision in the patient's clinical record using the criteria in paragraphs (1)-(8) of this subsection. If this is done by a designated staff member, a program physician shall review, countersign, and date the patient's record within 72 hours where this information is recorded. The program physician shall adhere to the following criteria in determining whether a patient is responsible in handling narcotic drugs:

- (1) absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;
- (2) regularity of clinic attendance;
- (3) absence of serious behavioral problems at the clinic;
- (4) absence of known recent criminal activity, e.g., drug dealing;
- (5) stability of the patient's home environment and social relationships;
- (6) length of time in maintenance treatment;
- (7) assurance that take-home medication can be safely stored within the patient's home; and
- (8) whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion of narcotic drugs.

(d) The requirement of time in treatment found in Title 21, Code of Federal Regulations, §291.505(d)(6)(v), is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician must deny or rescind the take-home medication privileges of a patient if any of the eight criteria found in subsection (c) of this section are not met.

(e) If a patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule, the patient may be permitted a temporarily reduced schedule, provided that patient is also found to be responsible in handling narcotic drugs as provided in subsection (c) of this section. A travel hardship in this case does not pertain to the travel distance from the patient's home to the clinic, nor does it pertain to a patient who resides in another state and regularly attends a clinic located in the State of Texas. Examples of travel hardships are business trips and out-of-town family emergencies to locations where there are no nearby narcotic treatment programs to which a patient may temporarily transfer. An illness hardship will require a medical evaluation from an attending physician other than a program physician. The rationale for an exception to a mandatory schedule shall be recorded in the patient's record by the program physician, or by an appropriately trained health-care professional supervised by the program physician after consulting with the physician. In this situation, the physician shall review, countersign, and date the patient's record within 72 hours where this rationale is recorded. In any event, a patient may not be given more than a two-week supply of narcotic drugs at any time, due to special circumstances.

(f) If a treatment center program is not in operation due to the observance of an official state holiday, patients may be permitted one extra take-home dose to allow them not to have to attend the clinic on that holiday. An official state holiday is a holiday on which most state offices are closed and routine state government business is not conducted. This does not apply to special patients on methadone doses greater than 100mg or patients in long or short term detoxification or others deemed to be irresponsible by the program physician.

(g) The program supervisory counselor shall review and countersign within 72 hours all the information and findings recorded in each patient's record under Title 21, Code of Federal Regulations, §291.505(d)(3)(iv).

(h) The admitting program physician or an appropriately trained health-care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. The admitting program physician shall record, date and sign his or her findings, or date, review, and countersign the findings of the appropriately trained health-care professional in the patient's record within 72 hours to signify his or her review of and concurrence with the history and physical findings.

(i) The medical director or other authorized physicians shall sign or countersign all medical orders within 72 hours.

(Such medical orders include but are not limited to the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation.)

(j) A person who has resided in a penal or chronic care institution for one month or longer may be admitted to maintenance treatment within 14 days prior to release or discharge, or within six months after release from such an institution without documented evidence to support findings of physiological dependence, provided the person would have been eligible for admission before he or she was incarcerated or institutionalized and treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by an appropriately trained health-care professional supervised by the admitting program physician. The admitting program physician shall date and sign these recordings. The health-care professional is required to consult with the admitting program physician before the initial dose is administered to the patient. In this case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial dose to the patient.

(k) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may return to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by an appropriately trained health-care professional supervised by the admitting program physician. The admitting program physician shall date and sign these recordings. The health-care professional is required to consult with the admitting program physician before the initial dose is administered to the patient. In this case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient. Pregnant patients are required to be given the opportunity for, and should be encouraged to access prenatal care either by the program or by referral to appropriate health-care pro-

viders. This encouragement is to be documented in the patient's counseling records.

(l) At least once a year, the program physician shall date, review, and countersign the treatment plan within 72 hours of the counselor's review of the treatment plan with the patient and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. The treatment plan and progress notes must deal with the patient's mental and physical problems, apart from drug abuse.

(m) The periodic treatment plan is required to contain adequate documentation of any prescription drug, other than methadone, that a patient may be taking, including the name of the drug, the prescription number, the dose, the reason for prescribing, the name of the prescribing doctor, the pharmacy's name and telephone number, the date it was prescribed and the length of time the patient is to be taking the drug. In addition, except for emergency medications, there is to be a letter from the prescribing practitioner as to the need for the prescription and their awareness of the patient being on methadone. The patient will be responsible for delivering this letter the day they inform the program they are taking additional prescription drugs.

(n) There is a danger of drug dependent persons attempting to enroll in more than one NTP to obtain quantities of drugs for the purpose of self-administration or illicit marketing. Therefore, drugs shall not be provided to a patient who is known to be currently receiving drugs from another treatment program without prior approval from the State Methadone Authority.

(o) Patients who are known to be enrolled in more than one narcotic treatment program (NTP) at a time will be forced to choose one clinic for treatment. That patient must then begin treatment as a completely new patient, including attending the clinic on a daily basis or a minimum of six days per week, for a period of six months.

(p) Employees who are formerly addicted to drugs of abuse are considered risks to the security of drug stocks and may not have access to the drugs or to the drug dispensing area. Currently addicted individuals, and individuals with a history of opiate usage (including methadone) within one year of the employment application, are not eligible for employment and/or ownership of a NTP.

(q) A narcotic drug may be administered or dispensed only by a practitioner licensed under the appropriate state law and registered under the appropriate state and federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of

the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health care professional authorized by federal and state law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of narcotic drugs administered or dispensed and shall record and countersign all changes in dosage schedules within 72 hours.

(r) The program medical director shall ensure that the initial dose of methadone for a new patient does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms. A patient is to be given an initial dose of 30 milligrams and then observed for one hour to see if opiate abstinence symptoms are suppressed. If not, an additional dose of up to 10 milligrams may be given. The patient is to be observed for an additional hour. If opiate abstinence symptoms are still not suppressed, then the patient may be given up to an additional 10 milligrams. This procedure, administering methadone in up to 10 milligram increments with a one-hour observance period after each addition, may be continued until abstinence symptoms are suppressed and within a scope that ensures patient safety.

(s) For recordkeeping purposes, if a patient misses appointments for two weeks or more without notifying the clinic, the episode of care is considered terminated and is to be so noted in the patient's record with the exception of very unusual circumstances (example: a patient is hospitalized comatose, with no next of kin to notify the program), that will be required to be recorded in the patient's records. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, the patient is considered a new patient in accordance with Title 21, Code of Federal Regulations, §291.505(d)(1)(i), (ii), (iii)(A) and (B), (iv), (v), and (d)(2) and (3) and is to be so noted in the patient's record.

(t) A person may be admitted as a patient for a maintenance program only if a program physician determines that the person is currently physiologically dependent upon a narcotic drug and became physiologically dependent at least one year before admission for maintenance treatment. A one-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least one year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on which physiological addiction

began cannot be ascertained, the admitting program physician may admit the person to maintenance treatment, if from the evidence presented, observed, and recorded in the patient's record, it is reasonable to conclude that there was physiological dependence at a time approximately one year before admission.

(u) All notations by NTP personnel on patient files and other files kept by the NTP for purposes of this chapter shall be typed, printed or legibly handwritten so that any regulatory authority could read the writing.

(v) A NTP may not refuse to allow an inspection or otherwise interfere with personnel of the State Methadone Authority in the performance of their duties, including the photocopying of patient records during an inspection. It is a violation for a NTP not to fully cooperate in any inspection by the State Methadone Authority.

(w) Each NTP shall notify the State Methadone Authority in writing of any change in the employment status of any of its program personnel. This notice shall be provided within 20 days of the event.

(x) NTP counselors not exempted must be licensed by the Texas Commission on Alcohol and Drug Abuse (TCADA).

(y) Any theft from or illegal break-in to the clinic must be reported in writing to the State Methadone Authority within 10 days of the event.

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 July 31, 1992.

TRD-9210475

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

Effective date: September 1, 1992

Proposal publication date: March 3, 1992

For further information, please call:(512) 458-7248

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.24, §101.27

The Texas Air Control Board (TACB) adopts amendments to §101.24 and §101.27, concerning general rules, without changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2927).

The amendments clarify and correct rule language so that both rules are consistent in content and meaning

A public hearing was held in Austin on May 27, 1992, to consider the proposed amendments. Written comments were accepted through May 29, 1992. Four commenters submitted written testimony. No oral testimony was presented during the public hearing. All testimony and written comments have been reviewed and seriously considered. The majority of testimony was directed at emissions fees for fiscal year (FY) 1994 and beyond. The following discussion addresses the comments on the proposed revisions.

One individual believed that the TACB needs to provide a portion of the funds generated by §101.24 and §101.27 to local air quality agencies.

The TACB does not have the authority to channel funds directly to local air pollution programs. However, the TACB negotiates individual contracts with each federally funded local agency to assist localized air pollution control program activities.

DuPont requested that §101.27 reflect that companies which have prepared an emissions inventory should not have to validate emissions with continuous emissions monitors (CEM) or other quantifiable means when operating at reduced capacity during slow business years. When the emissions fee rate reaches \$25 per ton, the difference between allowable and actual reduced emissions could be significant.

The proposed language does not indicate a dollar per ton emission fee requirement for FY 1994. The FY 1994 amount will be determined at a later date. Furthermore, the rule language has not changed concerning actual emissions validation. The staff agrees that CEM or specific testing for reduced production levels may be costly. Therefore, an alternate of using allowable emissions without expensive monitoring or testing was devised for the original rule language. This low cost method has been available and will continue to be available in the future for companies to use at their discretion.

In response to proposed changes to §101.27, the Lower Colorado River Authority (LCRA) offered substantial testimony on the Federal Clean Air Act (FCAA) requirements for a federally mandated \$25 per ton emissions fee, unless the state can demonstrate an alternate fee rate will adequately fund the permit program.

LCRA further proposed a two-stage process where the companies would submit their emissions inventories early in the next calendar year, the TACB would determine the level of funding required based on the inventories, and the appropriate fee would be assessed during the next year. The United States Environmental Protection Agency commented favorably with the caveat that the emission fee rules would need to be amended again in 1993.

The staff agrees in part with the LCRA that an emissions fee should be based on the level of emissions reported. The proposed language has removed the previous reference to a fee

of \$25 per ton for FY 1994. Funding for the agency is determined by the legislature for a biennial period which precludes using the LCRA proposal in an annual fashion; however, the TACB has used and will continue to use a system similar to that proposed for future funding submittals to the legislature. The staff will consider the LCRA suggestion in future rulemaking when a fee is established for FY 1994.

The LCRA suggested that the fee due dates for the proposed §101.24 and §101.27 needed to be clarified.

The staff feels that the rule language clearly identifies the due dates based on the first letter of the company name. The fees collected in November or December of 1992 (FY 93) will be based on emissions rates for the previous full calendar year (1991). This procedure of assessing emissions fees based on the previous full calendar year's emissions remains unchanged.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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 July 31, 1992.

TRD-9210464 Lane Hartscock
Deputy Director
Texas Air Control Board

Effective date: August 31, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 908-1451

• 31 TAC §101.28

The Texas Air Control Board (TACB) adopts new §101.28, concerning asbestos notification fees, with changes to the proposed text as published in the April 24, 1992 *Texas Register* (17 TexReg 2930). The amendments are in response to House Bill Number 1 (General Appropriations Act), Rider 9, 72nd Texas Legislature. The statute authorizes the TACB to collect fees from contractors performing demolition and renovation projects that may involve asbestos to support oversight and enforcement activities required under the federal requirement of National Emission Standards for Hazardous Air Pollutants (NESHAP).

Public hearings were held in Houston on May 21, 1992, and in Austin on May 27, 1992, to consider the proposed new section. Written comments were accepted through May 29, 1992. Thirteen commenters submitted written testimony. Ten individuals presented oral testimony during the two public hearings. All testimony and written comments have been reviewed and seriously considered. The following discussion addresses the comments on the proposed revisions in the following areas.

Sierra Club; Houston Apartment Association; Fort Worth-Tarrant County Health Departments; City of Houston; Texas Apartment Association, Inc.; and one individual expressed concern that the proposed rules are not clear on how the local agencies will fit into the program as far as collecting fees or contracting with the TACB to perform inspections

Although funding of local agencies is beyond the context of this rule, the staff is aware that this is an area that needs to be addressed. Decisions regarding which agencies will perform the inspections and how fees will be passed through to these agencies have not been made at this time. The TACB is continuing to work with the Texas Department of Health to resolve these issues.

Galveston County Health District, Houston Apartment Association; City of Houston, and Texas Apartment Association, Inc. pointed out discrepancies between the preamble rule language which applies to "owner/operator" and statute language which deals with "contractors."

The staff agrees with the commenters that an inconsistency exists in the language. The staff recommends changes to §101.28(a) that reflect that this rule applies to "contractors" rather than an "owner/operator." It further defines a contractor as the individual or organization responsible for the asbestos removal. If the asbestos removal is performed by the owner/operator, then that individual is responsible for the fee.

Rice University, Incarnate Word College, Southern Methodist University, University of North Texas, University of Texas at Austin, and the Houston Independent School District stated that the Legislature did not intend for this rule to apply to tax exempt schools and universities. Also, the quality of education would be reduced because of the additional expenses incurred by this rule.

Asbestos removal in schools and universities is a significant portion of the total asbestos removal performed in the state. To insure equal treatment regarding asbestos removal costs and inspection of removal activities, the language is adopted as proposed with no exemption or exclusion for schools.

Galveston County Health District recommended deleting the "Asbestos Fee Form" and consolidating all reporting to the maximum extent possible.

The staff concurs and the "Asbestos Fee Form" has been deleted from the rule and a billing invoice system has been implemented.

Galveston County Health District and Fort Worth-Tarrant County Health Departments wanted to know how the NESHAP information on asbestos renovation or demolition activities would be obtained by regional TACB offices or by the local agencies. An individual wanted more enforcement, especially in Austin.

The staff agrees that these areas need to be addressed, however, these issues are beyond the scope of rulemaking. The TACB receives the information regarding NESHAP notification. This information will be passed on to local programs as appropriate. The col-

lection of fees will allow more inspections and a subsequent improvement of enforcement to occur.

Galveston County Health District felt that the benefit of enforcing the new section as described in the preamble is questionable without supporting data. The City of Houston stated that the cost analysis section of the preamble did not fully address the cost of the proposed rules to local governments who may lose the ability to collect fees currently charged for conducting asbestos inspection and oversight and indirect costs relating to payment of fees

Direct costs are placed into the preamble. The rule language cannot address contractual agreements between state and local governments, nor can it do a detailed analysis on the impacts to local governments fee collection activities. If the local programs are contracted to perform asbestos inspections, then the fees would be passed through to the program for the performance of these services.

Galveston County Health District and an individual felt that the fee calculation seemed to be overly complicated. A fee based on the percentage of sales tax paid by owners for contractor's services was suggested as an alternative to the proposed fee.

The staff believes that the calculation is straight-forward and follows the guidelines prescribed in the statute, requiring that a fee be assessed for asbestos removal. No calculations by contractors will be necessary since the staff has recommended a billing invoice system where the TACB will calculate the amount of fee owed. Furthermore, a sales tax fee would not accurately reflect the amount of asbestos removed, but rather, the amount of the contractor's fee for the project.

Houston Lighting and Power suggested that a refund be given minus an administrative fee. An individual stated that it was the Legislature's intent to give refunds.

The amount of overpayment is refunded minus a \$25 administrative processing charge. The staff recommends a refund program to address these concerns.

Reynolds Metal Company suggested carrying forward credit against future fees instead of providing refunds.

A refund system will be used instead of a credit plan since it would be less costly to the state to administer.

Houston Lighting and Power (HL&P) recommended that the TACB allow at least a ten-day delay after notification before requiring payment. Emergency notifications were used as an example where a delay in payment would be necessary. Texas Mid-Continent Oil and Gas Association suggested that the payments be deferred until the work was completed, unless it was a very large job where a downpayment of half the fee would be paid. Rice University supported accounting by means of an invoicing system.

In general, the staff agrees with HL&P and Rice University. A billing invoice system which establishes a billing invoice for each notification will be implemented. The contrac-

tor will have a maximum of 30 calendar days to remit payment.

The City of Houston and the Texas Apartment Association, Inc. felt that cities having a local ordinance for asbestos fee collection should be exempted from this rule and be allowed to continue to charge and collect an asbestos fee according to individual city ordinances.

The staff disagrees with this suggestion. The TACB has no jurisdiction nor control over local ordinances. This issue is a contractual matter and not one of rulemaking.

Texas Mid-Continent Oil and Gas Association wanted to have a clarification concerning renotification requirements when the amount of asbestos is different than originally reported.

The staff feels that 40 Code of Federal Regulations §61.145(b)(2) clearly identifies renotification requirements. It states: "Update notice, as necessary, including when the amount of asbestos changes by at least 20%."

The new section is adopted under the Texas Clean Air Act, §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§101.28: Asbestos Notification Fees.

(a) Applicability. On or after September 1, 1992, the contractor of a demolition or renovation activity shall remit to the Texas Air Control Board (TACB) a fee that is based upon the amount of asbestos subject to the reporting requirements of the National Emission Standards for Hazardous Air Pollutants (for Asbestos) promulgated in the Code of Federal Regulations (CFR) at 40 CFR 61, Subpart M. For purposes of this section, the term "contractor" is the individual or organization responsible for the asbestos removal.

(b) Payment. Within 30 calendar days of the date on the TACB Asbestos Billing Invoice, the billed fee(s) which are calculated by the TACB from the notification form shall be payable to the Texas Air Control Board in the form of a check or money order and the original TACB Billing Invoice shall be remitted to the Texas Air Control Board, (Attention: Asbestos Fees), 12124 Park 35 Circle, Austin, Texas 78753.

(c) Basis for fees. The fee shall be based on the total amount of regulated asbestos-containing material (RACM) reported to be removed as defined in 40 CFR §61.141. The fee shall be calculated on the Asbestos Billing Invoice at a rate of \$20 per Asbestos Reporting Unit (ARU). The number of ARUs associated with a removal activity is determined by dividing the number of linear feet reported by 260, the number of square feet reported by 160, and the number of cubic feet reported by 35. The sum of these ARUs, rounded up to the nearest tenth of a whole number, shall then

be multiplied by the \$20 rate to calculate the fee due with the notification. The minimum fee shall be \$50 per notification, and the maximum fee shall be \$7,500 per notification. The fee is assessed only for the amount of asbestos reported to be removed. If no asbestos is removed or if the amount of asbestos removed is less than one ARU, no fee shall be assessed. Annual notifications of maintenance activities subject to 40 CFR §61, Subpart M, are included in the fee requirement.

(d) Schedule. A check or money order for the dollar amount of the fee due shall be remitted within 30 calendar days of the date on the Asbestos Billing Invoice sent by the TACB. The following fee schedule shall apply for all notification revisions.

(1) If a revision is made with an official TACB notification form in which the original amount of asbestos reported is more than the actual amount removed, the TACB shall refund the amount of overpayment minus a \$25 administrative processing fee.

(2) If a revision is made with an official TACB notification form in which the original amount of asbestos reported is less than the actual amount removed, an additional fee covering the difference shall be remitted at the same time that renotification is made.

(3) If a revision is made with an official TACB notification form in which the original amount of asbestos reported remains unchanged, payment is not required when the renotification is made.

(e) Nonpayment of fees. The provisions of this section, as first adopted and as amended thereafter, shall remain in effect for purposes of any unpaid assessment, and the fees assessed pursuant to such provisions, as adopted or as amended, remain a continuing obligation. Failure to remit the full asbestos fee with the original TACB Asbestos Billing Invoice shall result in formal enforcement action under the Texas Clean Air Act, §382.082 or §382.088. In addition, §382.091(a)(2) provides for criminal penalties for those failing to pay fees. 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 July 31, 1992.

TRD-9210462 Lane Hartssock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: August 31, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 908-1451

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter J. Industrial Solid Waste and Hazardous Waste Fee System

• 31 TAC §335.326, §335.329

The Texas Water Commission adopts amendments to §335.325 and §335.329, concerning the industrial solid waste and hazardous waste fee system. Section 335.326 is adopted with changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4429). Section 335.329 is adopted without changes and will not be republished. The amendments will exclude certain materials from the determination of the dry weight of a hazardous waste subject to the assessment of fees for disposal in underground injection wells. The amendment will exempt from the measurement certain materials, which are not solid wastes, and are required to be added to waste streams to meet federal operating requirements relating to the prevention of migration of wastes in underground formations.

Section 335.326, relating to dry weight determination, is changed by rewording subsection (c). This change does not alter the effect of the rule, but will ensure the consistency of this provision with the definition of "dry weight" contained in the Health and Safety Code, §361.131.

Comments on the proposed rule were received from E. I. DuPont in support of the proposal.

The amendments are adopted under the Health and Safety Code, Chapter 361, as amended by House Bill 1986, Acts of the 72nd Legislature, 1991, which provides the Texas Water Commission with the authority to establish an industrial solid waste and hazardous waste fee program and implement fee assessments for industrial solid waste and hazardous waste generators, facilities and permit applicants, and the commercial and noncommercial management of hazardous wastes and under the Water Code §5.103 which gives the Texas Water Commission the authority to adopt any rules necessary to carry out its powers, duties, and responsibilities.

§335.326. Dry Weight Determination.

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

(c) For purposes of a fee assessed under §335.325 of this title (relating to Hazardous Waste Management Fee Assessment), the dry weight of a hazardous waste disposed in an underground injection well, to which brine, inorganic salts, or other authorized agents are added to maintain density control to assure compliance with no-migration requirements of 49 Code of

Federal Regulations 148 Subpart C, shall be determined prior to the addition of the agent. No solid waste, as defined by the Health and Safety Code, §361.003(37), may be excluded from the determination of dry weight under this subsection.

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 August 3, 1992.

TRD-9210531 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: August 24, 1992

Proposal publication date: June 19, 1992

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 153. DWI Education Program Standards and Procedures

General Provisions

• 40 TAC §§153.1, 153.2, 153.7

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§153.1, 153.2, and 153.7, concerning general provisions, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2752).

The amendments are adopted to define terms commonly used in the DWI Education Programs, to address the name change of one agency represented on the DWI Certification Committee, and to define the expiration dates of exceptions granted to DWI Education Programs.

The amendments provide clarity to terms used by DWI Education Programs, reflect a name change for the Texas Department of Transportation, a member of the DWI Certification Committee and clarifies the expiration dates for exceptions granted to DWI Education Programs.

One comment was received in support of the adoption of the proposed revisions from the 12th and 278th Judicial District Community Supervision and Corrections Department.

The amendments are adopted under the Texas Code of Criminal Procedure, Article 42.12, §13h, as amended in Chapter 473 (1989) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for state-approved DWI Education 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 July 29, 1992.

TRD-9210442 Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 1, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 867-8720

• 40 TAC §153.17, §153.18

The Texas Commission on Alcohol and Drug Abuse adopts new §153.17, and §153.18, concerning general provisions, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2752).

The new sections are adopted to establish program participants complaint procedures and to establish a rule prohibiting participant discrimination.

The new sections establish complaint procedures for program participants, as well as establishing a rule prohibiting discrimination against program participants.

One comment was received in support of the adoption of the new sections from the 12th and 278th Judicial District Community Supervision and Corrections Department.

The new sections are adopted under the Texas Code of Criminal Procedure, Article 42.12, §13h, as amended in Chapter 473 (1989), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for state-approved DWI Education 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 July 29, 1992.

TRD-9210443 Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 1, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 867-8720

DWI Education Program Standards

• 40 TAC §§153.31, 153.35, 153.36, 153.38

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§153.31, 153.35, 153.36, 153.38, concerning DWI edu-

cation program/standards. Section 153.36 is adopted with changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2753). Sections 153.31, 153.35, and 153.38 are adopted without changes and will not be republished.

The amendments are adopted to enhance the program purpose, clarify the citations relating to client confidentiality, and define operational requirements. They will also clarify required audiovisuals as well as to further define program staff requirements. A typographical error in §153.36(7) on the proposed submission necessitates the adoption with changes as the word "shall" was inadvertently typed instead of the correct word, "should."

Section 153.31 expands the purpose of the program to include education on other drugs as well as alcohol; §153.35 provides the correct federal and state citations relating to client confidentiality; §153.36 defines operational requirements of programs and §153.38 further defines criteria for program staff.

One comment was received in support of the adoption of the proposed revisions from the 12th and 278th Judicial District Community Supervision and Corrections Department.

The amendments are adopted under the Texas Code of Criminal Procedure, Article 42.12, §13h, as amended in Chapter 473 (1989), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for State-approved DWI Education Programs.

§153.36. Program Operation Requirements. All certified programs designed to rehabilitate persons who have been placed on probation for driving while intoxicated under the provisions of the Act shall:

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

(7) utilize all required films and/or videos, transparencies, booklets, calculator, and any other required resources in instruction. Transparencies and 16mm films shall be projected on a surface which produces a clearimage. If the program uses VCR equipment, the monitor should be at least 25 inches and the videotapes must be of high quality. The monitor must be positioned in the classroom so that all participants have an unobstructed view. Any supplemental films used in the program must have prior approval from the DWI Certification Committee according to the following criteria:

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

(8)-(15) (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 July 29, 1992.

TRD-9210444

Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 1, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512)
867-8720

◆ ◆ ◆
**Part XVIII. State Pension
Review Board**

**Chapter 601. General
Provisions**

- 40 TAC §§601.1, 601.20, 601.30,
601.40, 601.50

The State Pension Review Board adopts new §§601.1, 601.20, 601.30, 601.40, and 601.50, concerning general provisions, without changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 16).

These rules are set forth for the purpose of interpreting and implementing the Government Code, Title 8, Chapter 801. The proposed rules direct the board to conduct regularly scheduled meetings, to elect officers, and to designated committees.

The new sections will outline procedures for board meetings, the election of officers, and the designation of committees.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, Title 8, Subtitle A, Chapter 801, §801.201, which provides the State Pension Review Board with the authority to adopt rules for the conduct of its business.

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 July 30, 1992.

TRD-9210532

Rita Horwitz
Executive Director
State Pension Review
Board

Effective date: August 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512)
463-1736

◆ ◆ ◆
**Chapter 603. Officers and
Meetings**

- 40 TAC §§603.1, 603.20, 603.30,
603.40, 603.50, 603.60

The State Pension Review Board adopts new §§603.1, 603.20, 603.30, 603.40, 603.50, and 603.60 concerning officers and meetings, without changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 16).

The new sections are set forth for the purpose of interpreting and implementing the Government Code, Title 8, Chapter 801. The proposed rules direct the board to conduct regularly scheduled meetings, to elect officers, and to designated committees.

The sections will outline procedures for board meetings, the election of officers, and the designation of committees.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, Title 8, Subtitle A, Chapter 801, §801.201, which provides the State Pension Review Board with the authority to adopt rules for the conduct of its business.

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 July 30, 1992.

TRD-9210533

Rita Horwitz
Executive Director
State Pension Review
Board

Effective date: August 24, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512)
463-1736

**TITLE 43. TRANSPORTA-
TION**

**Part I. Texas Department
of Transportation**

Chapter 11. Design Division

Freeway Mainlanes

- 43 TAC §11.71

The Texas Department of Transportation adopts an amendment to §11.71, concerning control of access on freeway mainlanes, without changes to the proposed text as published in the May 15, 1992, issue of the *Texas Register* (17 TexReg 3629).

The proposed amendment clarifies the department's role and responsibility relative to its participation in the cost of constructing additional frontage roads.

The amendment provides for a waiver of the cost conditions for local governments with such waiver to be by written order of the commission based on consideration of the population level, bonded indebtedness, tax base, and tax rate of the local government involved.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 6666 and 6674w, et seq, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, to promote public safety, to facilitate the movement of traffic, and to preserve the financial investment of the public in its highways.

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 July 30, 1992.

TRD-9210430

Diane L Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: August 20, 1992

Proposal publication date: May 15, 1992

For further information, please call: (512)
463-8630

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 5.97, the Texas 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 July 23, 1992, in Room

100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, considered a petition filed by the Staff of the Texas Department of Insurance proposing amendments to Rule IX of the Texas Manual of Rules, Classifications and Rates for Workers' Compensation and Employers' Liability and adding Employee Leasing Forms EL-1 and EL-1A and Employee Leasing/Client

Company Endorsement WC 42 04 06 The rule was proposed in a petition (Reference Number W-0692-31-1), filed by staff on June 15, 1992. On July 23, 1992, the State Board of Insurance adopted the amendments with changes to the proposed published text. In addition, the board repealed the current Rule IX, Section E, and Texas Amendatory Endorsement WC 42 03 01D.

The amendment defines several terms including employee leasing arrangement and specifically states that such arrangement means an arrangement under lease, contract or otherwise, whereby an entity provides workers it claims are its employees or co-employees for workers' compensation purposes to another entity. The rule provides that an employee leasing firm wishing to secure a workers' compensation insurance policy shall purchase a standard workers' compensation insurance policy and submit an Employee Leasing Form EL-1 (or in the case of an employee leasing firm that wishes to continue workers' compensation insurance coverage, an Employee Leasing Form EL-1A) and a separate Employee Leasing/Client Company Endorsement for each client company with which it has an employee leasing arrangement. It provides that premiums and other charges shall be calculated based on the payroll, rate for each applicable classification and the experience modifier of the client company as shown on its Employee Leasing/Client Company Endorsement. The experience modifier most recently issued by the Department to the client company before it entered into any employee leasing arrangement shall be used to calculate premium for leased workers of the client company until the client company has leased its workers from the same employee leasing firm for two years from the date of the employee leasing firm's experience rating date following the date on which the client company contracted with the employee leasing firm. At the end of this period, premium for leased workers of a client company will be calculated based on the experience modifier of the employee leasing firm. If a client company does not have an experience modifier when it contracts with an employee leasing firm, then premium for the leased workers of the client company will be calculated based on an experience modifier of 1.00 (which reflects that the client company has neither a debit experience modifier nor a

credit experience modifier). If an employee leasing arrangement exists as of the effective date of this rule and the client company has not leased its workers from the same employee leasing firm for two years from the date of the employee leasing firm's experience rating date following the date on which the client company contracted with the employee leasing firm, then premium for the leased workers of the client company shall be calculated using the experience modifier of the client company shall be used beginning 90 days after the effective date of this rule, regardless of the anniversary rating date of the policy. The rule also provides that when the employee leasing arrangement ends and the client company either obtains a new workers' compensation insurance policy in its own name or adds its former leased workers to an existing policy, then the premium for that client company, if workers were leased from the same employee leasing firm for two years or more, will be calculated using the higher of its current experience modifier or the experience modifier of the employee leasing firm. Otherwise, the higher of its current experience modifier (if any) or the last known experience modifier of the client company before it entered into any employee leasing arrangement shall be used.

The rule provides that in addition to other statutory, regulatory or contractual grounds for cancellation or non-renewal that may exist, any violation of this rule, including without limitation, any false or misleading statement, misrepresentation, concealment or omission of a material fact by a client company or by an employee leasing firm of any information required to be provided under this rule, is grounds for cancellation or non-renewal upon 30 days notice. Notice of cancellation or non-renewal shall be sent by certified mail to the employee leasing firm and the Texas Department of Insurance no later than the 30th day before the date on which the cancellation or nonrenewal becomes effective. The employee leasing firm shall provide notice of the cancellation to each client company by certified mail within three days of receipt of such notice. In addition, the rule allows the insurer to conduct periodic audits at any time after the effective date of the policy for any purpose. The insurer shall have the same rights of audit with respect to each client company that has engaged in an employee leasing arrangement. The insurer may make adjust-

ments in premium calculations as a result of such audits.

The rule provides that if an insured under a workers' compensation insurance policy enters into an employee leasing arrangement during its policy period, it shall notify its insurer within 10 days and comply with all provisions of this rule within 90 days. Premium for such insureds shall be calculated for the remaining policy period in accordance with this rule effective as of the date of the inception of the employee leasing arrangement.

The Employee Leasing Forms EL-1 and EL-1A which are made part of the rule must be provided to the insurer with all information requested before insurance is bound and shall be sworn to as true by the owner, partner or officer authorized to bind the employee leasing firm. If an employee leasing arrangement exists as of the effective date of this rule, then Form EL-1A is required within 90 days.

The Employee Leasing/Client Company Endorsement shall be submitted to the insurer by the employee leasing firm for each client company with which the employee leasing firm has an employee leasing arrangement. This endorsement shall be sworn to as true and correct by the owner, partner, or officer authorized to bind the client company. If an employee leasing arrangement exists as of the effective date of this rule, the employee leasing firm shall provide to the insurer within 90 days of the effective date of this rule, the endorsement for each client company with which the employee leasing firm has an employee leasing arrangement.

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. (Reference Number W-0692-31-1).

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 July 31, 1992.

TRD-9210508

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: August 22, 1992

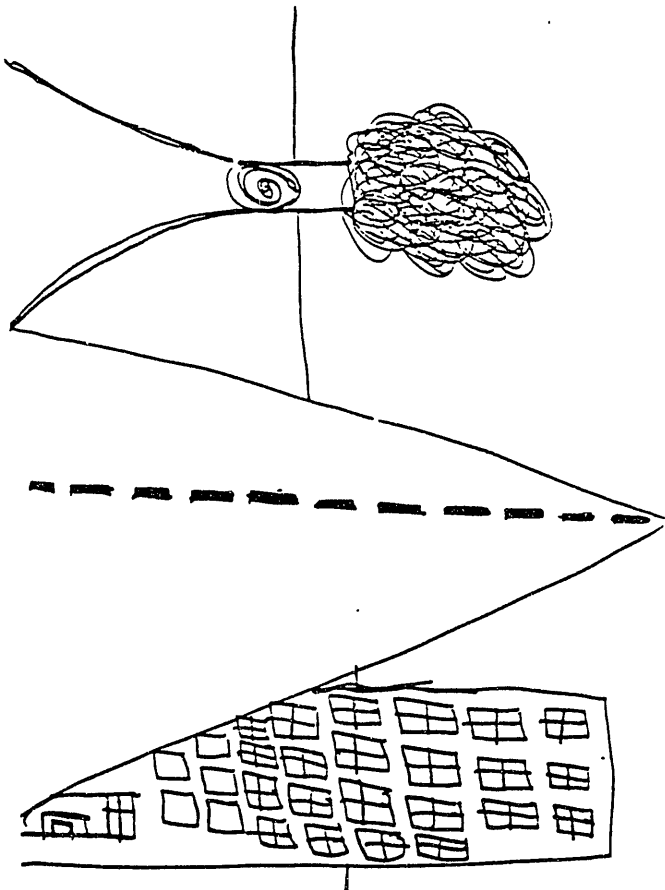
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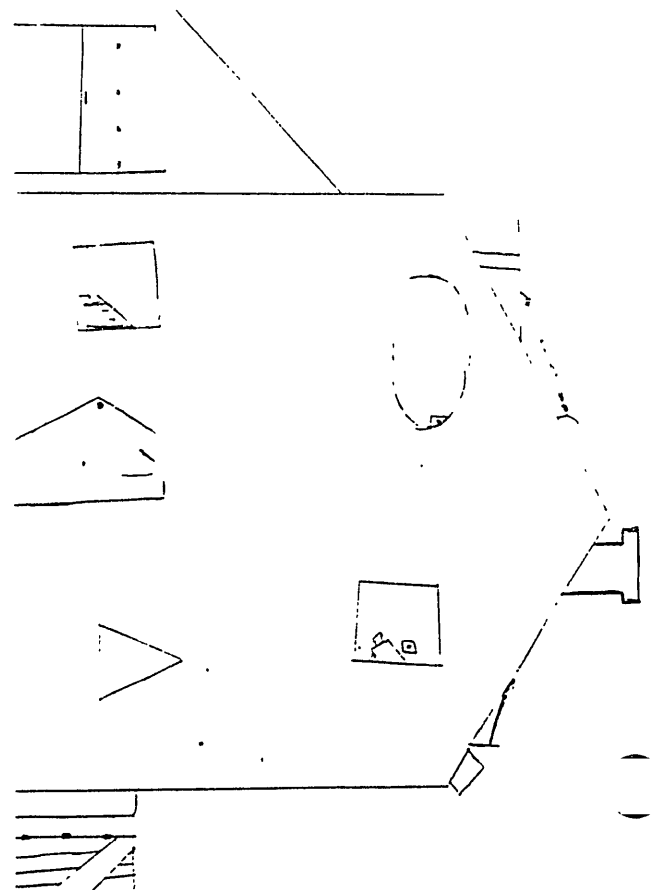
7-17



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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Monday, August 10, 1992, 10 a.m. The Lower Rio Grande Valley Pest Management Zone Committee of the Texas Department of Agriculture will meet at the Texas A&M Experiment Station and Extension Service, 2401 East Highway 83, Weslaco. According to the complete agenda, the committee will give an overview of Stalk Destruction Program; presentation of industry perspective; pest management update by Texas A&M; TDA presentation of cotton stalk destruction work plan; and general discussion of program and work plan.

Contact: Darrell Williams, P.O. Box 12847, Austin, Texas 78711, (512) 463-7619.

Filed: July 31, 1992, 2:07 p.m.

TRD-9210496

Wednesday, August 19, 1992, 9 a.m. The Office of Hearings Examiner of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §75.006(a) and §75.013(a) and 4 TAC §11.8(c)(1)(b) and §11.8(a)(4) by Ernest Brenek.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 30, 1992, 2:01 p.m.

TRD-9210413

Wednesday, September 23, 1992, 1 p.m. The Office of Hearings Examiner of the

Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §76.116(a)(1) and 4 TAC §7.22 by Jerry Hunt.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 30, 1992, 2 p.m.

TRD-9210412

Wednesday, October 21, 1992, 9 a.m. The Office of Hearings Examiner of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §76.116(a)(1) and 4 TAC §7.22 by Ed Shores, Docket Number 50-92-AEP.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 30, 1992, 2 p.m.

TRD-9210410

Wednesday, October 21, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §76.116(a)(1) and 4 TAC §7.22 by Ed

Shores, Docket Number 51-92-AEP.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 30, 1992, 2 p.m.

TRD-9210411

Texas Air Control Board

Tuesday, August 11, 1992, 5:30 p.m. The Monitoring and Research Committee of the Texas Air Control Board will meet at the Conley-Guerrero Senior Activity Center, 808 Nile Street, Austin. According to the complete agenda, the committee will consider and act on technical issues regarding the East Austin monitoring process and analysis; presentation by TACB staff; presentation by Oil Company Terminal operators; and hear public comments.

Contact: Lane Hartsock, 12424 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: July 31, 1992, 2:12 p.m.

TRD-9210497

Texas Alcoholic Beverage Commission

Friday, August 7, 1992, 10 a.m. The Texas Alcoholic Beverage Commission will meet at 5806 Mesa, Room 180, Austin. According to the complete agenda, the commission will consider changing bingo reporting period.

Contact: Dick Durbin, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: July 30, 1992, 3:54 p.m.

TRD-9210436

◆ ◆ ◆
State Board of Barber Examiners

Tuesday, August 4, 1992, 8 a.m. The State Board of Barber Examiners will meet at 9101 Burnet Road, Suite 103, Austin. According to the emergency revised agenda summary, the board discussed amending Rule 51.16 of the General Rules of Practice and Procedure concerning equipment for students. The emergency status was necessary because of a situation which was threatening to the public welfare. This situation had just come to the attention of the agency.

Contact: Jo King McCrorey, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: July 30, 1992, 3:26 p.m.

TRD-9210431

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Texas Bond Review Board

Tuesday, August 11, 1992, 10 a.m. The Staff of the Texas Bond Review Board will meet at the Reagan Building, Room 103, 105 West 15th Street, Austin. According to the agenda summary, the staff will call the meeting to order; discuss proposed issues; other business; and adjourn. Individuals with disabilities who plan to attend this meeting and who may require auxiliary aids or services should contact Marie Moore at (512) 463-1741 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Tom K. Pollard, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: August 3, 1992, 3:09 p.m.

TRD-9210558

◆ ◆ ◆
Texas Child Care Development Board

Wednesday, August 12, 1992, 9:30 a.m. The Texas Child Care Development Board will meet at the Sam Houston Building, Room 710, 201 East 14th Street, Austin. According to the complete agenda, the board will welcome and introduce members and guests; discuss approval of minutes from July 23 meeting; member reports on agency roles related to child care contracts; legislative and executive budget office reports concerning child care requests; state agency coordinating committee report on employee benefit options or child care ini-

tatives; Employee Retirement System report on child care options, cafeteria plans and employee assistance programs; and discuss new business.

Contact: Mary E. Fero, P.O. Box 12548, Austin, Texas 78711, (512) 463-2172.

Filed: July 31, 1992, 9:26 a.m.

TRD-9210459

◆ ◆ ◆
Texas Board of Chiropractic Examiners

Tuesday, August 4, 1992, 9:30 a.m. The Texas Board of Chiropractic Examiners met at 8716 MoPac Expressway North, Suite 301, Austin. According to the emergency revised agenda summary, the board called the meeting to order; discussed approval of minutes; action items; Rules 73.2, 73.3, 75.6, 76.1, 77.3, 78, 78.1, 79, 80.1, 80.4, 81, 82, 82.1 and on personnel matters and waiver; information items regarding planning, OSHA/CLIA mailing, and committee reports; discussed items regarding Rule 81: chiropractic facilities; other business included calendar, deadlines and miscellaneous; and period of public comment. The emergency status was necessary due to clarification of personnel matters.

Contact: Joyce Kershner, 8716 MoPac, Suite 301, Austin, Texas 78759, (512) 343-1895.

Filed: August 3, 1992, 1:22 p.m.

TRD-9210543

◆ ◆ ◆
Interagency Council on Early Childhood Intervention

Friday, August 14, 1992, 9 a.m. The Interagency Council on Early Childhood Intervention will meet at the Texas Department of Health, Room M652, 1100 West 49th Street, Austin. According to the complete agenda, the council will hear public comments; discuss approval of the minutes of previous meeting; discuss and possibly act on: draft legislative request and federal application for Public Law 102-119, including organizational structure, personnel budget, performance measurements and public hearing schedule; plans to provide case management services for infants and Medicaid enrollment; advisory committee report; election of chairperson and vice chairperson for fiscal year 1993; scheduling of council meetings for fiscal year 1993; recommendations for policy and funding; impact of state transfers and or closures; update on House Bill 7 activities; policy relating to eligibility of infants who were prenatally exposed to drugs.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7663. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 two days before meeting.

Filed: July 31, 1992, 4:17 p.m.

TRD-9210517

◆ ◆ ◆
Texas Education Agency

Tuesday, August 25, 1992, 9 a.m. The Minority Recruitment Advisory Committee of the Texas Education Agency will meet at the William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee is established by Texas Education Code, Chapter 51, Subchapter M, Engineering and Science Recruitment Fund. The committee will correct its charter; discuss major changes to its requests for proposals; hear presentations about programs proposed for funding; and decide which programs to recommend to the Commissioner of Education for funding; and other unscheduled but related matters may be discussed.

Contact: Dr. Philip Gehring, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9823.

Filed: July 31, 1992, 10:08 a.m.

TRD-9210465

◆ ◆ ◆
Texas Employment Commission

Tuesday, August 11, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss Administaff, Inc. versus James Kaster et al; Relief Services, Inc. versus Texas Employment Commission; Ben Hogan Company versus Texas Employment Commission; Society of Separationist versus James Kaster et al; and relocation of agency headquarters; actions, if any, resulting from executive session; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 32; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 3, 1992, 4:15 p.m.

TRD-9210571

General Services Commission

Wednesday, August 12, 1992, 9:30 a.m. The General Services Commission will meet at 1711 San Jacinto Street, Room 402, Central Services Building, Austin. According to the agenda summary, the commission will consider and discuss space allocation for the Office of the Attorney General in the William P. Clements Building; consider and discuss approval of Fiscal Year 93 operating budget; consider and discuss participation in the equipment financing master lease program; update on the statewide telecommunications plan; meet in executive session to consider the status of the purchase of real property in Houston and Austin pursuant to the provisions of Texas Civil Statutes, Article 601b; receive a report from counsel concerning the status of all pending litigation; and consider personnel matters.

Contact: Judith M. Porras, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: August 4, 1992, 9:54 a.m.

TRD-9210625

Office of the Governor, Criminal Justice Division

Friday, August 14, 1992, 9 a.m. The Automobile Theft Prevention Authority of the Criminal Justice Division of the Office of the Governor will meet at the Westin Paso Del Norte Hotel, 101 South El Paso Street, El Paso. According to the complete agenda, the authority will call the meeting to order; make introductions; review Texas Motor Vehicle Theft statistics by county, focusing on U.S./Mexico border counties; discuss cause, effect and possible solutions for reducing motor vehicle theft on the U.S./Mexico border from each members' perspective; discuss and/or adopt procedure for committee to follow in developing a plan for reducing the incidence of motor vehicle theft along the U.S./Mexico border of Texas; discuss and/or adopt committee meetings schedule, and adjourn.

Contact: Glenn Brooks, 201 East 14th Street, Austin, Texas 78701, (512) 463-1919.

Filed: July 30, 1992, 2:17 p.m.

TRD-9210420

Texas Department of Health

Saturday, August 22, 1992, 10 a.m. The Texas Radiation Advisory Board Radioactive Waste Committee of the Texas Department of Health will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the complete agenda, the committee

will discuss and possibly act on Texas Regulations for the Control of Radiation (TRCR), Part 44, relating to consideration of change for recommendation as a proposed rule.

Contact: Dave Lacker, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 31, 1992, 4:17 p.m.

TRD-9210516

Saturday, August 22, 1992, 11 a.m. The Texas Radiation Advisory Executive and Legislative Committee of the Texas Department of Health will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the complete agenda, the committee will discuss and possibly act on Nuclear Regulatory Commission review of department's review of department's radiation program; supplemental reports on low-level radioactive waste and health physicists classification and compensation; legislative topics relating to radiation; and discuss other items not requiring committee action.

Contact: Dave Lacker, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 31, 1992, 4:17 p.m.

TRD-9210518

Saturday, August 22, 1992, 1:30 p.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the complete agenda, the committee will discuss approval of minutes of previous meeting, and discuss and possibly act on Texas Low-Level Radioactive Waste Disposal Authority information; radiation control activities as relating to the Texas Water Commission and the department's Bureau of Radiation Control; committee reports on radioactive waste, executive and legislative activities, chairman's report; rules and regulatory guide update as relating to the Texas Water Commission and the Bureau of Radiation Control; and committee report on naturally occurring radioactive material (NORM).

Contact: Dave Lacker, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 31, 1992, 4:17 p.m.

TRD-9210519

Texas Department of Housing and Community Affairs

Friday, August 7, 1992, 8 a.m. The Finance Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; public comment period; consider and possibly act on the budget for the housing finance and development division for the fiscal year 1993; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Susan Leigh, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3933.

Filed: July 30, 1992, 5:08 p.m.

TRD-9210449

Friday, August 7, 1992, 10 a.m. The Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Conference Room, Austin. According to the agenda summary, the board will consider and possibly act on approval of minutes; presentation by David Ojeda, Jr.; discuss budget; amendment to Section 718 of the Single Family Indenture; participation in new multi-family affordable housing program; updates on various department's programs; internal auditor report; legislative update-contingency appropriation; update on instructions from board from June 10, 1992. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Susan J. Leigh, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3933.

Filed: July 30, 1992, 5:08 p.m.

TRD-9210448

Texas Department of Human Services

Thursday, August 13, 1992, 10 a.m. The Indigent Health Care Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Public Hearing Room (125E), Winters Complex, Austin. According to the complete agenda, the committee will call the

meeting to order; discuss approval of minutes; discuss DHS program reform initiatives project; indigent health care advisory committee bylaw changes; report on statewide workshop, report from workshop networking session on residency issues; results of survey and report from subcommittee; report from workshop networking session on work registration issue and report from subcommittee; program summary reports on county expenditures and report from subcommittee; update on state assistance fund; physician payment rate revision; election of FY 1993 committee chair and vice-chair, feedback on prior recommendations; and other items from the committee.

Contact: Jane Jaggard, P.O. Box 1439030, Austin, Texas 78714-9030, (512) 338-6461

Filed: July 31, 1992, 11:11 a.m.

TRD-9210471

Texas Department of Insurance

Wednesday, August 12, 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 reopening to consider the application of Robert William Martin, Freeport and Houston, for a Group II Insurance Agent's license. Docket Number 11456.

Contact: Kelly Townsell, 333 Guadalupe Street, Austin, Texas 78701, (512) 475-2983.

Filed: August 3, 1992, 4:30 p.m.

TRD-9210617

Thursday, August 13, 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 reopening to consider whether disciplinary action should be taken against Mary K. Arias, San Antonio, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Variable Contract Agent's license. Docket Number 11420.

Contact: Kelly Townsell, 333 Guadalupe Street, Austin, Texas 78701, (512) 475-2983.

Filed: August 3, 1992, 4:30 p.m.

TRD-9210616

Thursday, August 13, 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 rehearing

to consider whether disciplinary action should be taken against Joe Hardy Cannon who holds a Group I, Legal Reserve Life Insurance Agent's license, a Local Recording Agent's license and an Adjusters license. Docket Number 11395.

Contact: Kelly Townsell, 333 Guadalupe Street, Austin, Texas 78701, (512) 475-2983.

Filed: August 3, 1992, 4:30 p.m.

TRD-9210615

Friday, August 14, 1992, 11 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 the application for the amendment to the Articles of Incorporation of American Industries Fire Insurance Company, Houston, increasing the authorized capital. Docket Number 11536.

Contact: Kelly Townsell, 333 Guadalupe Street, Austin, Texas 78701, (512) 475-2983.

Filed: August 3, 1992, 4:30 p.m.

TRD-9210614

Monday, August 17, 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 application for amendment of the Articles of Incorporation of South Texas Bankers Life Insurance Company, Beeville, changing the location of its home office increasing its authorized capital, changing the period of its duration, and providing for director liability. Docket Number 11541.

Contact: Kelly Townsell, 333 Guadalupe Street, Austin, Texas 78701, (512) 475-2983.

Filed: August 3, 1992, 4:30 p.m.

TRD-9210613

Tuesday, August 25, 1992, 2 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 public hearing under Docket Number 1923 to consider the appeal of William Fraley of Commissioner of Insurance Order Number 92-0499 that denied Mr. Fraley's application for a risk manager's license.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 30, 1992, 4:11 p.m.

TRD-9210438

Wednesday, September 9, 1992, 9 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 hold a public hearing under Docket Number 1925 to consider a petition filed by the Texas Logging Council of the Texas Forestry Association proposing revisions to the Texas Basic Manual of Rules, Classification and Rates for Workers' Compensation and Employers' Liability with respect to the workers' compensation classifications applicable to the logging industry; specifically, the council requests changes to Code 2702-logging and lumbering-not pulpwood; new code 2719 for contractors with mechanized tree felling; and reassignment of contractors with both mechanized tree felling, mechanized delimiting and fully mechanized chipping operations in the woods to Code 6044.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 30, 1992, 4:12 p.m.

TRD-9210439

Tuesday, September 29, 1992, 9 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 hold a public hearing under Docket Number R-1924 to consider final action on adoption of proposed amendments to 28 TAC §1.601 concerning the notice of policyholder and complaint procedures and toll-free telephone number information and complaint procedures. The proposed rule was published in the July 7, 1992 issue of the *Texas Register* (17 TexReg 4871). The comment period expires on August 7, 1992.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 30, 1992, 4:11 p.m.

TRD-9210498

Texas Board of Irrigators

Tuesday, August 11, 1992, 9 a.m. The Texas Board of Irrigators will meet at the Stephen F. Austin Building, Room 513-F, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will consider 16 outstanding complaints; consider referring complaint against W. C. Aldridge to the Plumbing Board; announce which files are to be carried to FY 1993; report on representation before Plumbing Board's meeting; Attorney General's Office report on guidelines for refer-

ring files to their office; discuss role of transition from the Board of Irrigators to an Advisory Council; legal counsel to discuss transition of board rules to Water Commission's rules; consider approval of minutes; and report on various items of interest.

Contact: Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 463-7990.

Filed: July 31, 1992, 9:26 a.m.

TRD-9210457

Texas Department of Licensing and Regulation

Thursday, August 13, 1992, 9 a.m. The Inspections and Investigations, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Gwendolyn Coffey Caesar doing business as GCC Talent and Model Agency for violation of Vernon's Texas Civil Statutes, Articles 5221a-9 and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: August 4, 1992, 9:34 a.m.

TRD-9210622

Midwestern State University

Thursday, August 6, 1992, 3:45 p.m. (Revised agenda). The Finance and Audit Committee of the Board of Regents of Midwestern State University met at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee made recommendations proposing a library usage fee and increases in the course fees for Division of Business Administration courses.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: August 3, 1992, 11:13 a.m.

TRD-9210538

Thursday, August 6, 1992, 4:30 p.m. (Revised agenda). The Personnel and Curriculum Committee of the Board of Regents of Midwestern State University met at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee made recommendations concerning the possible offering of the M.S. Degree in Nursing and

M.S. Degree in Radiologic Science; deletion of minors in the science area (petroleum geology, sedimentology, geochemistry, geophysics and paleontology); and modifications to the MSU/Coordinating Board Table of Programs and corresponding mission statement.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: August 3, 1992, 11:02 a.m.

TRD-9210537

Friday, August 7, 1992, 9 a.m. (Revised agenda). The Board of Regents of Midwestern State University will meet at Midwestern State University, Hardin Board Room, Wichita Falls. According to the agenda summary, recommendations will be made by the finance and audit committee (Library usage fee and business administration course fee increases) and the personnel and curriculum committee (M.S. Degree in Nursing, M.S. Degree in Radiologic Science; deletion of minor programs in science area; and MSU/Coordinating Board Table of Programs; and corresponding mission statement).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4211.

Filed: August 3, 1992, 11:03 a.m.

TRD-9210539

Texas Lay Midwifery Board

Friday, August 7, 1992, 10 a.m. The Texas Lay Midwifery Board will hold an emergency meeting at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the board will introduce new program secretary; discuss approval of the minutes of previous meeting; discuss and possibly act on Sunset Commission report; board responsibilities; continuing education subcommittee report; complaint committee report; infection control procedures; education issues; and appoint additional subcommittees. The emergency status is necessary due to unforeseeable circumstances.

Contact: Joey Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: July 31, 1992, 4:16 p.m.

TRD-9210515

Board of Nurse Examiners

Wednesday, August 12, 1992, 10 a.m. The Task Force on Use of Unlicensed Personnel of the Board of Nurse Examiners will meet

at the Board of Nurse Examiners, Conference Room, 9101 Burnet Road, #104, Austin. According to the complete agenda, the task force will call the meeting to order; welcome guests; discuss approval of minutes of July 15, 1992 meeting; review draft of delegation rules; and recommendations regarding rule revisions.

Contact: Cady Crismon, P.O. Box 140466, Austin, Texas 78714, (512) 834-8665.

Filed: July 31, 1992, 2:06 p.m.

TRD-9210490

Thursday, August 13, 1992, 10 a.m. The Task Force on Standards and Conduct of the Board of Nurse Examiners will meet at the Board of Nurse Examiners, Conference Room, 9101 Burnet Road, #104, Austin. According to the complete agenda, the task force will review minutes of June 11, 1992; discuss comments from constituent groups; review proposed standards of nursing practice; review proposed unprofessional conduct rules; make recommendations to the board; and adjourn.

Contact: Mary Anne Hanley, P.O. Box 140466, Austin, Texas 78714, (512) 834-8665.

Filed: July 31, 1992, 2:06 p.m.

TRD-9210489

On-Site Wastewater Treatment Research Council

Tuesday, August 11, 1992, 1:30 p.m. The On-Site Wastewater Treatment Research Council will meet at the Marriott at the Capitol Hotel, 701 East 11th Street, Austin. According to the complete agenda, the council will discuss approval of the minutes of the previous meeting; hear executive secretary's and chairman's reports; review results of annual conference; discuss and possibly act on technical review committee report; new proposals for funding; progress reports on active projects; contract arrangement on previous grants; and hear announcements, comments and schedule subsequent meeting(s).

Contact: Ted Johns, P.O. Box 13087, Austin, Texas 78701, (512) 834-6663.

Filed: July 31, 1992, 10:55 a.m.

TRD-9210470

Texas Board of Pardons and Paroles

Tuesday, August 11, 1992, 9 a.m. The Texas Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will discuss and act on the follow-

ing items: pending litigation-Daniel Johnson (executive session); discuss approval of minutes of May 12, 1992; parole plans where children are involved; SCR 26 status report; law as applicable to parole consultants and use of disclosure from; recommendation to reduce case pull from three years to thirteen months; and board work session.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 405-5408.

Filed: August 3, 1992, 3:09 p.m.

TRD-9210556

Texas State Board of Physical Therapy Examiners

Wednesday, September 2, 1992, 6 p.m. The Education, Legislative Affairs Committees of the Texas State Board of Physical Therapy Examiners will meet at the Wyndham South Park Hotel, Room of Lynn Laird, 4140 Governor's Row, Austin. According to the complete agenda, the committees will call the meeting to order; discuss changes to the Act as they relate to sunset process and the probability of such changes; discuss new business; discuss foreign-trained requirements; credentialing agencies: their use, functions, and past services; and adjourn.

Contact: Sherry L. Lee, 3001 South Lamar Boulevard, Austin, Texas 78704, (512) 443-8202.

Filed: July 31, 1992, 9:25 a.m.

TRD-9210455

Thursday, September 3, 1992, 9 a.m. The Texas State Board of Physical Therapy Examiners will meet at 3001 South Lamar Boulevard, Suite 101, Austin. According to the agenda summary, the board will discuss approval of minutes; hold a public hearing; discuss policy on EMG/Nerve velocity tests; hear committee reports, including Sunset Committee report on proposed changes to Act and Rules Committee report on proposed rules changes; executive director's report, chairperson's report; discuss new business; and adjourn.

Contact: Sherry L. Lee, 3001 South Lamar Boulevard, Austin, Texas 78704, (512) 443-8202.

Filed: July 31, 1992, 9:25 a.m.

TRD-9210456

Texas Department of Protective and Regulatory Services

Friday, August 7, 1992, 9 a.m. The Texas Board of Protective and Regulatory Services of the Texas Department of Protective and Regulatory Services will meet at 701 West 51st Street, Public Hearing Room, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of minutes from July 18; hear comments/announcements by the chair; briefing on day care licensing standards; discuss DPRS strategic plan and FY 1994/95 legislative appropriation request; consider filling the position of executive director; meet in executive session to discuss potential candidates for an interim and/or permanent executive director, in accordance with Article 6252-17, §2(g); reconvene in open session to take action, if necessary, on the matter discussed in executive session.

Contact: Terry Trimble, P.O. Box 149303, Mail Code E-504, Austin, Texas 78714-9030, (512) 450-3070.

Filed: July 30, 1992, 11:25 a.m.

TRD-9210401

Texas Public Finance Authority

Wednesday, August 12, 1992, 9 a.m. The Board of the Texas Public Finance Authority will meet at 300 West 15th Street, Senate Meeting Room One, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of the minutes; consider creation of a Series B commercial paper program and related matters; structuring of bond refunding issues in view of recommendations by staff and FA; selection of underwriter firms to accomplish sale of refunding bonds; selection of bond counsel, sale of general obligation bonds at 11 a.m. CDT; select winning bidder and consider resolution authorizing issuance of bonds; consider TPFAs procedures for the development, distribution and processing of RFP'S; meet in executive session to review status of executive director and other key staff personnel under Article 6252-17(g); and adjourn.

Contact: Rachael Caron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: July 31, 1992, 1:53 p.m.

TRD-9210487

Public Utility Commission of Texas

Thursday, August 13, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11312-application of Southwestern Bell Telephone Company to withdraw the Bellboy Personal Signaling Service tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 31, 1992, 2:43 p.m.

TRD-9210509

Thursday, August 20, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11347-application of Johnson County Electric Cooperative Association for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 30, 1992, 2:12 p.m.

TRD-9210417

Thursday, August 20, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11348-application of Bartlett Electric Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 30, 1992, 2:12 p.m.

TRD-9210415

Wednesday, September 23, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11266-application of Guadalupe-Blanco River Authority for a rate increase for the Guadalupe Valley Hydro System.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 30, 1992, 2:12 p.m.

TRD-9210416

Monday, October 26, 1992, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11048-petition of Medina Electric Cooperative, Inc. for reduction of fuel factor and for a partial waiver of Substantive Rule 23.23(b)(2)(D)(iii); and 11244-application of South Texas Electric Cooperative, Inc. for authority to refund an overrecovery of fuel cost revenues and to reduce its fixed fuel factor.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 3, 1992, 2:49 p.m.

TRD-9210554

Monday, November 9, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11014-application of Pedernales Electric Coop, Inc. to amend certificate of convenience and necessity for proposed transmission line within Hays County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 30, 1992, 2:12 p.m.

TRD-9210414

Thursday, November 12, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10935-application of Gulf States Utilities Company to amend certificate of convenience and necessity for proposed transmission line within Montgomery County (Line 803).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 31, 1992, 2:43 p.m.

TRD-9210510

Wednesday, November 18, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a final prehearing conference in Docket Number 11259-joint application of Farmers Electric Cooperative, Inc. and the City of Garland to amend certificated service area boundaries within Dallas County, and application for sale, transfer or merger.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 30, 1992, 2:13 p.m.

TRD-9210419

Thursday, November 19, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11259, joint application of Farmers Electric Cooperative, Inc. and the City of Garland to amend certificated service area boundaries within Dallas County, and application for sale, transfer or merger.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 30, 1992, 2:13 p.m.

TRD-9210418

Texas National Research Laboratory Commission

Tuesday, August 11, 1992, 10 a.m. The Personnel, Procurement and Minority Affairs Committee of the Texas National Research Laboratory Commission will meet at Dallas Love Field Airport Administration Offices, Conference Room A, Dallas. According to the complete agenda, the committee will convene meeting and take roll call of members; meet in executive session to discuss personnel matters; reconvene in open meeting; recommendation to approve proposed FY93 staffing plan and compensation package; consideration, and action as may be appropriate, regarding proposed commission Personnel Policies and Procedures Manual; hear public comment; and adjourn.

Contact: Karen L. Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

Filed: August 3, 1992, 2:03 p.m.

TRD-9210552

Texas State Soil and Water Conservation Board

Thursday, August 13, 1992, 8 a.m. The Texas State Soil and Water Conservation Board will meet at 311 North Fifth Street, Conference Room, Temple. According to the complete agenda, the board will review and take appropriate action on the following: discuss approval of the minutes from the July 15, 1992 meeting; district director appointments; EPA's proposed rules for NPDES permitting of confined animal feed-

ing operations; clean water council NPS subcommittee report; 1992 annual statewide meeting of soil and water conservation district directors; General Services Commission's travel rules; reports from agencies and guests; 1994-1995 legislative appropriation request; 1992 technical assistance grant funds allocations; review proposed changes to agency rules; board member travel; schedule next board meeting September 16, 1992.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250.

Filed: August 3, 1992, 9:36 a.m.

TRD-9210523

Texas Guaranteed Student Loan Corporation

Tuesday, August 11, 1992, 11 a.m. The Search Committee of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, Colonnade Building, Suite 300, Austin. According to the complete agenda, the committee will discuss approval of the minutes of June 26, 1992; meet in executive session to continue work on search for corporate president/CEO; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle, Austin, Texas 78754, (512) 835-1900.

Filed: August 3, 1992, 8:43 a.m.

TRD-9210521

Texans' War on Drugs, Inc.

Friday, August 7, 1992, 9 a.m. The Board of Directors of the Texans' War on Drugs, Inc. will meet at the Texans' War on Drugs Conference Room, 11044-D Research Boulevard, Suite 200, Austin. According to the agenda summary, the board will call the meeting to order; establish quorum; discuss approval of minutes; elect officers and directors; board bylaws amendment recommendations; adopt resolutions; meet in executive session; hear president's report; set next meeting date; and adjourn.

Contact: Janis Pittel, 11044-D Research Boulevard, Suite 200, Austin, Texas 78759, (512) 343-6950.

Filed: July 30, 1992, 2:29 p.m.

TRD-9210423

Texas Southern University

Wednesday, August 5, 1992, 4 p.m. (Revised agenda). The Finance Committee of the Board of Regents of Texas Southern

University met at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee considered the 1992-93 annual budgets; investments; and financial information items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 31, 1992, 12:35 p.m.

TRD-9210479

Wednesday, August 5, 1992, 4 p.m. (Rescheduled from July 29, 1992). The Finance Committee of the Board of Regents of Texas Southern University met at 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee considered matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 31, 1992, 9:24 a.m.

TRD-9210454

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**University of Texas Health
Center at Tyler**

Wednesday, August 12, 1992, 11:30 a.m. The Animal Research Committee of the University of Texas Health Center at Tyler will meet at the Biomedical Research Building, Room 116, Highways 155 and 271 North, Tyler. According to the complete agenda, the committee will discuss approval of minutes from June 30, 1992 meeting; hear chairman's report-Dr. Peterson; Veterinarian's report-Dr. Thedford; discuss occupational medicine program; discuss procedure for developing continuing medical education courses requiring Vivarium support; new protocols/addenda: use of a whiffle ball reservoir for polyclonal antibody production in rabbits; studies of immediate hypersensitivity in guinea pigs: influence of acemannan training lab for endoscopic repair of inguinal hernia in swine; and adjourn.

Contact: Barry Peterson, Ph.D., P.O. Box 2003, Tyler, Texas 75710, (903) 877-7012.

Filed: August 3, 1992, 4:02 p.m.

TRD-9210570

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Texas Water Commission

Wednesday, August 12, 1992, 10 a.m. (Rescheduled from May 21, 1992). The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen

F. Austin Building, 1700 North Congress Avenue, Room 1149A, Austin. According to the agenda summary, the commission will hold a public hearing on assessment of administrative penalties and requiring certain actions of Conroe Creosoting Company. SWR Number 31799.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 30, 1992, 2:28 p.m.

TRD-9210421

Wednesday, September 30, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Rolling Hills Water Treatment Plant, Classroom, 2500 Southeast Loop 820, Fort Worth. According to the agenda summary, the commission will consider an application by Cold Springs Processing and Disposal for an amendment to Permit Number MSW1225-A to allow an increase in the capacity of the facility. This application has been designated Application Number MSW1225-A. The facility is on a 10.272 acre site located at 1300 Cold Springs Road, immediately west of the Rock Island and Missouri Pacific Railroad, and 1,000 feet north of Spur Highway 347 (Belknap Street) in Fort Worth, Tarrant County.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 2, 1992, 1:56 p.m.

TRD-9210547

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**Texas Water Well Drillers
Board**

Thursday, August 13, 1992, 9:30 a.m. The Texas Water Well Drillers Board will meet at the John H. Reagan Building, 105 West 15th Street, Room 104, Austin. According to the agenda summary, the board will consider approval of the minutes of its June 16, 1992 meeting; consider whether to set the following complaints for a formal public hearing before the board to take appropriate legal action; Windell Bisidas, Dale Faught, Jr., Cory Miller, David Hancock, Ralph Cadwallader, Gerald Hilyard, Milton Martin, Tom Mathers, Ronnie Simmons, and O'Brien Woods; consider the certification of applicants for registration; consider the applications for driller-trainee registration; Ed Thomas's request for reinstatement of license; discuss Water Well Pump Installer examinations; and consider staff reports.

Contact: Kathy Keils, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: August 4, 1992, 9:15 a.m.

TRD-9210621

Thursday-Friday, August 13-14, 1992, 1:30 p.m. and 9:30 a.m. respectively. The Texas Water Well Drillers Board will meet at the John H. Reagan Building, 105 West 15th Street, Room 104, Austin. According to the agenda summary, the board will review and discuss the following: WWDB-92-12, Ronald Maxey, License Number 2349-W; WWDB-92-13, Morris Robinson, License Number 1464-W; WWDB-92-14, Tim Robinson, License Number 2212-W; WWDB-92-8, James Smith, License Number 2837-W; WWDB-92-10, Joseph Bellenger, License Number 1846-W; WWDB-92-11, William Bell, License Number 318-W; WWDB-92-16, Charles Garrard, License Number 1940-W; WWDB-92-17, Danny Murchison, License Number 1574-W; WWDB-92-18, Robert E. West, License Number 255-W; WWDB-92-19, Herbert Walker, License Number 971-W; WWDB-92-20, Craig Smith, License Number 3207-W; and discuss its role in the transition of the board into an advisory council for the commission.

Contact: Kathy Keils, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-8069.

Filed: July 30, 1992, 3:55 p.m.

TRD-9210437

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**Regional Meetings
Meetings Filed July 30, 1992**

The Bell-Milam-Falls Water Supply Corporation Board of Directors will meet at the WSC Office, F.M. 485, Cameron, August 13, 1992, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9210422.

The Bosque, Erath, Hill, Johnson, and Somervell County Education District 21 met at the Glen Rose Middle School Cafeteria, 812 College Street, Glen Rose, August 3, 1992, at 7:30 p.m. Information may be obtained from George B. Gilbert, 726 North Clinton, Stephenville, Texas 76401, (817) 968-7995. TRD-9210432.

The Leon County Central Appraisal District Appraisal Review Board met at the Fairfield High School, Lecture Room, 631 Post Oak, Fairfield, August 6, 1992, at 10 a.m. Information may be obtained from Robert M. Winn, P. O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9210408.

The Lower Colorado River Authority Special Pricing Committee will meet at 3700 Lake Austin Boulevard, General Manager's Conference Room, Austin, August 5-7, 10-14, 1992, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78756, (512) 473-3283.

TRD-9210440.

The Panhandle Ground Water Conservation District Number Three Board of Directors met at the Water District Office, 300 South Omohundro Street, White Deer, August 5, 1992, at 7 p.m. Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9210399.

The Tarrant Appraisal District Board of Directors met at 2301 Gravel Road, Fort Worth, August 6, 1992, at 9 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9210409.

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Meetings Filed July 31, 1992

The Archer County Appraisal District Board of Directors met at the Appraisal District Office, 211 South Center Street, Archer City, August 5, 1992, at 5 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9210511.

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, August 7, 1992, at 9 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9210452.

The Bosque Central Appraisal District Appraisal Review Board met at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, August 4, 1992, at 9 a.m. Information may be obtained from Billye L. McGehee, P.O. Box 393, Meridian, Texas 76665, (817) 435-2304. TRD-9210469.

The Capital Area Rural Transportation System (CARTS) Board of Directors met at 5111 East First Street, Austin, August 6, 1992, at 9 a.m. Information may be obtained from Pearl Jackson, 5111 East First Street, Austin, Texas 78702, (512) 478-7433. TRD-9210488.

The Cash Water Supply Corporation will meet at the Administration Office, F.M. 1564 East, Greenville, August 11, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9210491.

The Central Appraisal District of Johnson County Appraisal Review Board met at 109 North Main Street, Suite 201, Room 202, Cleburne, August 3, 1992, at 9 a.m. Information may be obtained from Jim Hudspeth, 109 North Main Street, Cleburne, Texas 76031, (817) 645-3986. TRD-9210450.

The Coastal Bend Council of Governments Membership will meet at the Nueces County Courthouse, Central Jury Room, Fourth Floor, 901 Leopard Street, Corpus Christi, August 7, 1992, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9210493.

The Coastal Bend Quality Workforce Planning Association will meet at Chela's Restaurant, 9840 Leopard Street, Corpus Christi, August 21, 1992, at 8 a.m. Information may be obtained from Baldomero Garcia, 5110 Wilkinson Drive, Corpus Christi, Texas 78415, (512) 855-0322. TRD-9210458.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, August 17, 1992, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9210494.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, August 17, 1992, at 6 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9210495.

The Creedmoor Maha Water Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, August 5, 1992, at 7:30 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991. TRD-9210472.

The Dallas Area Rapid Transit Financial Standards Subcommittee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, August 4, 1992, at noon. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210467.

The Dallas Area Rapid Transit Rail Planning and Development Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, August 4, 1992, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210468.

The Deep East Texas Council of Governments Regional Review Committee met at the Lufkin Civic Center, 601 North Second Street, Angelina County, Lufkin, August 6, 1992, at 1 p.m. for training session and 2 p.m. for organizational meeting. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9210451.

The East Texas Council of Governments JTPA Board of Directors met at the Kilgore Community Inn, Kilgore, August 6, 1992,

at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9210453.

The Gulf Bend Mental Health and Mental Retardation Center Board of Trustees met at 1404 Village Drive, Gulf Bend Center, Victoria, August 5, 1992, at noon. (Rescheduled from July 23, 1992). Information may be obtained from Sharon Pratkan, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9210485.

The Johnson County Rural Water Supply Corporation Continuance of Special Called Board Meeting of July 30, 1992 met at JCRWSC Office, Highway 171 South, Cleburne, August 4, 1992, at 6 p.m. Information may be obtained from Charlene SoReile, P.O. Box 509, Cleburne, Texas 76031, (817) 645-6646. TRD-9210512.

The Lamb County Education District Board of Trustees met at 1500 East Delano, Littlefield, August 5, 1992, at 8 p.m. Information may be obtained from Jerry Blakely, 1500 East Delano, Littlefield, Texas 79339, (806) 385-3844. TRD-9210486.

The Nolan County Central Appraisal District Board of Directors met at the Nolan County Courthouse, Third Floor, Sweetwater, August 5, 1992, at 3 p.m. Information may be obtained from Lane Compton, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9210476.

The Shackelford Water Supply Corporation Board of Directors met at the Fort Griffin Restaurant, Albany, August 5, 1992, at noon. Information may be obtained from E. D. Fincher, P.O. Box 1295, Albany, Texas 76430, (915) 762-2519. TRD-9210492.

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Meetings Filed August 3, 1992

The Bexar-Medina-Atascosa Counties Water Control District Number One Board of Directors will meet at the District Office, Highway 81, 226-Highway 132, Natalia, August 10, 1992, at 8 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9210524.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, August 10, 1992, at 9 a.m. Information may be obtained from Bill Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0016. TRD-9210562

The Gulf Coast Quality Work Force Planning Committee TechForce 2000, Inc. will meet at the Region IV Education Service Center, 7145 Tidwell, Houston, August 11, 1992, at 10 a.m. Information may be obtained from Karen Baird, 250 North Sam

Houston Parkway, Houston, Texas 77060, (713) 591-9306. TRD-9210525.

The Hale-Hockley CED Number Eight Board of Directors met at the Citizens State Bank Committee Room, Anton, August 6, 1992, at 7 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9210559.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, August 11, 1992, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9210542.

The Hunt County Appraisal District Appraisal Review Board will meet at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, August 7, 1992, at 1:30 p.m. Information may be obtained from Shirley, P.O. Box 1339, Greenville, Texas 75401, (903) 454-3510. TRD-9210551.

The Mason County Appraisal District will meet at 206 Ft. McKavitt Street, Mason, August 13, 1992, at 6 p.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9210545.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, August 13, 1992, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9210526.

The Wise County Education District Board of Directors will meet at the Administration Building, 2108 15th Street, Bridgeport, August 11, 1992, at 7:30 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9210544.



Meetings Filed August 4, 1992

The Garza County Appraisal District Board of Directors will meet at the Appraisal District Office, 124 East Main Street, Post, August 13, 1992, at 9 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9210620.

The Palo Pinto Appraisal District Agricultural Advisory Board will meet at the Palo Pinto Courthouse, Palo Pinto, August 11, 1992, at 7 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1234. TRD-9210619.

The Tyler County Appraisal District Board of Directors held an emergency meeting at 806 West Bluff, Woodville, August 6, 1992, at 5 p.m. The emergency status was necessary as budget was vetoed and had to be resubmitted before deadline. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9210626.



In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Request for Proposals

The Texas Department of Agriculture (TDA) requests proposals for projects that use and expand the use of integrated pest management in agriculture pest control. TDA will award a total of \$133,500. The projects should be for implementing and carrying out biologically-intensive integrated pest management programs for farmer/rancher groups, on-farm/ranch demonstration trials and education programs developed from state of the art IPM systems. Proposals must come from producer organizations involved in state-wide integrated pest management programs.

Each proposal should include a one-page project summary, a review of any previous work related to the project, a project description encompassing a general work plan, duration and rationale, a description of the anticipated impact of the project, historical background information on the organization and a project budget. Upon completion of the project, a project report will be due within eight weeks. The quality of this report may be used to evaluate future funding requests. All awards will be subject to audit by TDA.

Proposals should be submitted to Dr. Shashank Nilakhe, Coordinator for Biotechnology, Producer Relations Division, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Dr. Nilakhe may be contacted at (512) 463-1088 for additional information about preparing the proposal. Proposals must be submitted no later than 5 p.m., September 21, 1992. Analysis of proposals will be based on the requirements listed above.

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

TRD-9210506 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: July 31, 1992

The Texas Department of Agriculture (TDA) requests proposals for boll weevil diapause program. TDA will award a total of \$47,870. The funds are intended for use in boll weevil diapause programs conducted by certified cotton producer organizations.

Each proposal should include a one-page project summary, a review of previous diapause programs conducted by the association, a project description encompassing a general work plan, duration and rationale, a description of the anticipated impact of the project, historical background information on the organization and a project budget. Upon completion of the project, a project report will be due within eight weeks. The quality of this report may be used to evaluate future funding requests. All awards will be subject to audit by TDA.

Proposals should be submitted to Dr. Shashank Nilakhe, Coordinator for Biotechnology, Producer Relations Division, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Dr. Nilakhe may be contacted at (512) 463-1088 for additional information about preparing the proposal. Proposals must be submitted no later than 5 p.m., September 21, 1992. Analysis of proposals will be based on the requirements listed above.

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

TRD-9210507 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: July 31, 1992

Texas Air Control Board Extension of Deadline for Written Comments

In the June 26, 1992, issue of the *Texas Register* (17 TexReg 4625), the Texas Air Control Board (TACB) published a notice of public hearings on proposed rule amendments to be held on July 27, 28, 29, and 30, 1992. The purpose of these hearings was to receive public testimony on proposed revisions to TACB Regulation V, Control of Air Pollution From Volatile Organic Compounds, the General Rules, and the State Implementation Plan. The original deadline of July 31, 1992, for receipt of written comments has been extended to August 14, 1992. All comments at the hearings, as well as those received by 4 p.m. on August 14, 1992, at the TACB central office, 12124 Park 35 Circle, Austin, Texas 78753, will be considered by the board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the central office of the TACB, Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, and at all TACB regional offices. For further information, contact Eddie Mack at (512) 908-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to respond with a written comment should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

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

TRD-9210463 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: July 31, 1992

Comptroller of Public Accounts
Correction of Error

The Comptroller of Public Accounts proposed new 34 TAC §5.54, concerning consulting services contracts. The rule was published in the July 24, 1992, *Texas Register* (17 TexReg 5184).

In paragraph (j)(2), the last sentence reference to "(9)(1)" is incorrect. It should read "(g)(1)".

◆ ◆ ◆
Texas Education Agency
Request For Applications

RFA #701-92-054. This request for applications is filed in accordance with ESEA Title II, Dwight D. Eisenhower Mathematics and Science Education Act.

Description. The Texas Education Agency (TEA) requests applications for the development of a staff development module for improving the utilization of varying strategies to enhance the teaching of mathematics for Grades 6-8 teachers (RFA) #701-92-054). The focus of the module is on using innovative concrete materials and problem-solving strategies to provide opportunities for students to learn the essential elements of the state mathematics curriculum. One grant will be awarded for the development on one module: Patterns, Relations and Functions, Grades 6-8 Teacher trainers will be identified by the Mathematics Section of the Texas Education Agency and the grantee will provide training for these identified people with assistance from staff at the Texas Education Agency. The grantee will also be responsible for designing an evaluation of the module and all activities involved.

Eligible Applicants. Eligible applicants include any public school district, education service center, or college or university in Texas.

Dates of Project. The project starting date will be on or about October 5, 1992. The project ending date will be no later than August 31, 1993.

Project Amount. The maximum funding for this project is \$42,000. The project is 100% federally funded from ESEA Title II Eisenhower funds.

Selection Criteria. Applicants will be approved based upon the ability of the applicant to carry out all requirements contained in the request for application.

Requesting the Application. A copy of the complete Request for Application (RFA #701-92-054) may be obtained by calling or writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about this request, contact Bonnie McNemar, Texas Mathematics Staff Development, Project Director, Harris County Department of Education, (713) 694-6300.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., Friday, September 18, 1992.

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

TRD-9210527 Lionel R. Meno
Commissioner of Education

Filed: August 3, 1992

◆ ◆ ◆
RFA #701-92-048. This request for applications if filed in accordance with ESEA Title II, Dwight D. Eisenhower Mathematics and Science Education Act.

Description. The Texas Education Agency (TEA) requests applications for the development of a staff development module for improving the utilization of varying strategies to enhance the teaching of mathematics for Grades 3-6 teachers (RFA) #701-92-048). The focus of the module is on using innovative concrete materials and problem-solving strategies to provide opportunities for students to learn the essential elements of the state mathematics curriculum. One grant will be awarded for the development on one module: Patterns, Relations and Functions, Grades 3-6. Teacher trainers will be identified by the Mathematics Section of the Texas Education Agency and the grantee will provide training for these identified people with assistance from staff at the Texas Education Agency. The grantee will also be responsible for designing an evaluation of the module and all activities involved.

Eligible Applicants. Eligible applicants include any public school district, education service center, or college or university in Texas.

Dates of Project. The project starting date will be on or about October 5, 1992. The project ending date will be no later than August 31, 1993.

Project Amount. The maximum funding for this project is \$42,000. The project is 100% federally funded from ESEA Title II Eisenhower funds.

Selection Criteria. Applicants will be approved based upon the ability of the applicant to carry out all requirements contained in the request for application.

Requesting the Application. A copy of the complete Request for Application (RFA #701-92-048) may be obtained by calling or writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about this request, contact Bonnie McNemar, Texas Mathematics Staff Development, Project Director, Harris County Department of Education, (713) 694-6300.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., Friday, September 18, 1992.

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

TRD-9210528 Lionel R. Meno
Commissioner of Education

Filed: August 3, 1992

Request for Proposal

RFP# 701-92-055. This request for proposal is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c, and Texas Education Code, §15.14.

Eligible Proposers. The Texas Education Agency is requesting proposals (RFP# 701-92-055) from banks or trust companies to implement and administer a securities lending program for the State Permanent School Fund of Texas.

Description. In order to maximize the income of the Permanent School Fund, the Texas Education Agency will select a lending agent to implement and administer a securities lending program. The selected contractor will design a program to lend the securities of the Permanent School Fund to approved borrowers in return for compensation.

Dates of Project. Beginning date for the contract will be approximately October 1, 1992, ending date will be August 31, 1993.

Project Amount. The proposer must describe fully the proposed compensation arrangement, including any guaranteed fee to be paid to the Permanent School Fund. The proposer must describe the method used to determine the aggregate compensation and the allocation of fees to the borrower, the lending agent and the Permanent School Fund.

Selection Criteria. The contract will be awarded based upon an evaluation of the contractor's ability to provide the requested services in compliance with all applicable statutes, including, but not limited to, the Texas Education Code, §15.14, and other regulations, while providing the highest compensation to the Permanent School Fund. Award of the contract is contingent upon a favorable ruling by the Texas Attorney General concerning a constitutional interpretation on this law.

Requesting the Proposal. A copy of the complete request for proposal (RFP# 701-92-055) may be obtained by writing or calling the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494 or call (512) 463-9304. Please refer to the RFP# in your request.

Further Information. For clarifying information about this request, contact Walter Arellano, Permanent School Fund Manager, Investment Office, Texas Education Agency, (512) 463-9169.

Deadline for Receipt of Proposals. The deadline for submitting a proposal is 5 p.m., Friday, August 28, 1992.

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

TRD-9210466 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: July 31, 1992

Texas Department of Health Correction of Error

Texas Department of Health submitted notices of open meetings for July 24 and July 25. The notices were published in the July 24, 1992, *Texas Register* (17 TexReg

5226 and 5227).

Due to an error by the *Texas Register*, the name of the committee was omitted from the notice of the meeting scheduled for Friday, July 24, 1992, 1:00 p.m. It should read "The Texas Board of Health Public Health Promotion Committee of the Texas Department of Health will meet at the Texas Department of Health...". The name of the committee was incorrect for the notice of the meeting scheduled for Saturday, July 25, 1992, 10:30 a.m. Instead of "Executive Committee", it should read "The Texas Board of Health Legislative Committee and Emergency and Disaster Committee of the Texas Board of Health...".

Fiscal Year 1993 HIV Health and Social Services Request for Proposals Public Hearing

The Texas Department of Health (department) will conduct a public hearing to be held in conjunction with requests for proposals submitted for fiscal year 1993 HIV health and social services projects. The time, date, location, and the applicant's proposal to be discussed at the hearing are as follows: Time-9 a.m. to noon; Date-August 18, 1992; Location-United Medical Centers, 2315 El Indio Highway, Eagle Pass, Texas 78853; Applicant-United Medical Centers. For further information, call Mary Martinez at (512) 534-8857.

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

TRD-9210499 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: July 31, 1992

Texas Department of Human Services Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services announces this consultant contract award. The invitation for offers was published in the March 27, 1992, issue of the *Texas Register* (17 TexReg 2300).

Description of Services: The selected contractor, referred to as the "Monitoring Contractor" will advise on the development of a request for proposal (RFP), assist in the evaluation and selection of a performing contractor, and monitor progress of the performing contractor.

Name of Consultant: The contract for consulting has been awarded to Spectrum Consulting Group, Inc.; 10100 Reunion Place, Suite 120; San Antonio, Texas 78216.

Amount and Term of Contract: This contract will not exceed \$3,000,000. The contract will begin July 23, 1992, and end August 31, 1995.

Reporting Dates:

Deliverables for Activity 1: Review of Draft Statewide Implementation RFP; due 20 working days after contract execution.

Deliverables for Activity 2: Initial Project Management Review; due no later than 20 working days after contract execution.

Deliverables for Activity 3: Review Project Organization and Staffing Needs; due no later than 20 days after contract execution.

Deliverables for Activity 4: Award of Performing Contract; due no later than 45 working days after Performing RFP bid response deadline.

Deliverables for Activity 5: Quality Assurance Review; due no later than first working day of each month beginning with the first working day that follows a 30 day period after Performing Contract execution.

Deliverables for Activity 6: Project Management Review; First working day of each month beginning with the first working day that follows a 30 day period after Performing Contract execution.

Deliverables for Activity 7: Acceptance Testing; due no later than five working days after satisfactory completion of each Acceptance Test.

Deliverables for Activity 8: Post-Pilot (Statewide) Implementation Evaluations; due no later than 30 working days after close of each pilot.

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

TRD-9210461 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: July 31, 1992

Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) is inviting offers for consultant services.

Description of Services: Develop goals, goal indicators and criteria for the nutrition education and training of Texas K-12 school children, their parents, teachers, school food service personnel, and administrators. Use criteria to select a representative sample, design valid reliable instruments, and develop standard procedures to assess the nutrition education and training needs of the above mentioned populations. Submit progress and final reports.

Closing Date for Receipt of Offers: The last date offers will be received is December 10, 1992.

Evaluation and Selection: Evaluation criteria will include qualifications and experience in research in the area of nutrition and health. Participation in state wide or nation wide research and evaluation projects. Ability to recruit and lead a team of researchers in dietetics and in measurement and evaluation. Evidence that the applicant has access to the facilities, equipment, and services necessary to complete project requirements.

Contact Person: To obtain a complete copy of the request for proposal packet, please contact Mahassen Ahmad, Ph.D., Texas Department of Human Services, P.O. Box 149030, MC W-313, Austin, Texas 78714-9030, (512) 4590-3041.

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

TRD-9210460 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: July 31, 1992

Texas Department of Insurance Company Licensing

The following application has been filed with the Texas Department of Insurance and is under consideration:

Application for name change in Texas for Unitrin Life Insurance Company, a foreign life insurance company. The home office is in Anaheim, California. The proposed new name is SafeHealth Life Insurance Company.

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

TRD-9210522 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: August 3, 1992

Texas Council on Offenders with Mental Impairments Request for Proposal

Notice of Extension of Closing Date. The Texas Council on Offenders with Mental Impairments has extended the closing date of the residential and case management RFP's published in the July 14, 1992, edition of the *Texas Register*. The closing date for receipt of proposals by the Texas Council on Offenders with Mental Impairments is August 20, 1992, at 5 p.m. Proposals received after this date and time will be rejected.

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

TRD-9210520 Dee Kifowit
Director
Texas Council on Offenders with Mental
Impairments

Filed: July 31, 1992

Texas Board of Licensure for Nursing Home Administrators Code of Ethics For Licensed Nursing Home Administrators

Mandate I. Individuals shall hold foremost the welfare of persons for whom care is provided. The Nursing Home Administrator shall: provide to all those entrusted to his or her care the highest quality of appropriate long term care and services; operate the facility in a manner that is consistent with the laws, regulations, and standards of practice acknowledged in the field of nursing home administration; in accordance with the laws and professional standards, protect the confidentiality of information regarding recipients of care; conduct administrative duties with the personal integrity that will earn the confidence, trust, and respect of the general public; establish and initiate appropriate steps to avoid discrimination on basis of race, sex, religion, age, national origin, handicap, marital status, ancestry, or any other factor that is illegally discriminatory or not related to requirements of quality long term care; never disclose professional or personal information regarding recipients of service to unauthorized personnel unless required by law in order to protect the public welfare.

Mandate II Individuals shall maintain high standards of professional competence. The Nursing Home Administrator shall manifest and maintain the competencies necessary to effectively perform his or her responsibilities as directed by TBLNHA; practice administration in accordance with capabilities and proficiencies and, when appropriate, seek counsel from qualified individuals; actively participate in the advancement of knowledge of and expertise in nursing home care administration through continuing education and professional development, never misrepresent his or her qualifications, education, experience, or affiliations; never provide services other than those for which he or she is prepared and qualified to perform.

Mandate III. Individuals shall maintain a professional position which places primary importance on the interests of the residents and the facility. The Nursing Home Administrator shall: avoid all preferential treatment, while providing a forum for the fair resolution of any disputes which may arise with regard to service delivery or facility management; inform the governing body (TBLNHA), or other authority as may be appropriate, of any actual or potential circumstances concerning him or her that could create a conflict of interest, or could have a substantial adverse impact on the facility or its residents; never participate in activities that allow even the impression of a conflict of interest or have a substantial adverse impact on the residents or the facility.

Mandate IV. Individuals shall honor their responsibilities to the public, their profession, and their relationships with colleagues and members of related professions. The Nursing Home Administrator shall: foster increased knowledge within the profession of nursing home administration and support research efforts to this end; participate with others within the community to plan for and provide a full range of health care services; share areas of expertise with colleagues, students, and the general public to increase awareness, and promote understanding of nursing homes in general and the profession of nursing home administration in particular; inform the TBLNHA Investigatory Unit of all actual or potential violations and fully cooperate with the agency's sanctioned inquiries into matters of professional conduct; never defend, support, or ignore unethical conduct perpetrated by other administrators, peers, students, or employees.

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

TRD-9210481 Gerard Swain
Acting Executive Director
Texas Board of Licensure for Nursing
Home Administrators

Filed: July 31, 1992

TBLNHA Code of Ethics

The Code of Ethics are as follows: demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all our public activities in order to inspire public confidence and trust in public institutions; serve in such a way that we do not realize undue personal gain from the performance of our official duties; avoid any interest or activity which is in conflict with the conduct of our official duties; support, implement, and promote merit employment and programs of affirmative action to assure equal employment opportunity by our recruitment, selection, and advancement of qualified persons from all elements of society; eliminate all forms of illegal discrimina-

tion, fraud, and mismanagement of public funds, and support colleagues if they are in difficulty because of responsible efforts to correct such discrimination, fraud, mismanagement or abuse, serve the public with respect, concern, courtesy, and responsiveness, recognizing that service to the public is beyond service to oneself; strive for personal professional excellence and encourage the professional development of our associates and those seeking to enter the field of public administration; approach our organization and operational duties with a positive attitude and constructively support open communication, creativity, dedication and compassion; respect and protect the privileged information to which we have access in the course of official duties; exercise whatever discretionary authority we have under law to promote the public interest; accept as a personal duty the responsibility to keep up to date on emerging issues and to administer the public's business with professional competence, fairness, impartiality, efficiency, and effectiveness; respect, support, study, and when necessary, work to improve federal and state constitutions and other laws which define the relationships among public agencies, employees, clients, and all citizens.

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

TRD-9210480 Gerard Swain
Acting Executive Director
Texas Board of Licensure for Nursing
Home Administrators

Filed. July 31, 1992

Panhandle Regional Planning Commission

Consultant Proposal Request

Panhandle Regional Planning Commission (PRPC) announces its Consultant Proposal Request pursuant to Texas Civil Statutes, Article 8252-11c, under the negotiation method to performing auditing. PRPC is soliciting proposals to perform services which will include three annual audits in accordance with the provisions of the Single Audit Act.

Detailed information regarding the project is set forth in the Request for Proposal Instructions which will be available on or after July 28, 1992, at the following location: Gayle Briggs, CPA, Director of Finance, Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105-9257.

The deadline for submission of proposals in response to this request will be 5 p.m., on Friday, August 14, 1992.

PRPC reserves the right to accept or reject any or all proposals submitted. PRPC is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractual alternatives. PRPC will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit PRPC to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates PRPC to award a contract or pay any cost incurred in the preparation of a response. PRPC specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where PRPC feels it to be its own best interest.

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

TRD-9210500 Gayle Briggs
Director of Finance
Panhandle Regional Planning Commission

Filed: July 31, 1992

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Public Utility Commission of Texas

**Notice of intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific CentraNet service for GTE Southwest Incorporated (GTE-SW).

Tariff Title and Number. Application of GTE-SW for approval of CentraNet Service for Texas A&M University pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11344.

The Application. GTE-SW is requesting approval of CentraNet Service for Texas A&M University. The geographic service market for this specific service is the College State area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on July 28, 1992.

TRD-9210426 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 30, 1992

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Southwestern Bell Telephone Company, Austin.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Texas Higher Education Coordinating Board pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11319.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Texas Higher Education Coordinating Board. The geographic service market for this specific service is the Austin area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on July 28, 1992.

TRD-9210425 John M. Renfrow
Secretary of the Commission

Public Utility Commission of Texas

Filed: July 30, 1992

◆ ◆ ◆
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for San Benito Independent School District, San Benito.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for San Benito Independent School District pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11350.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for San Benito Independent School District. The geographic service market for this specific service is the Rio Grande Valley area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on July 29, 1992.

TRD-9210424 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 30, 1992

◆ ◆ ◆
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Southwestern Bell Telephone Company, Austin.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for State of Texas Auditor pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11320.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for State of Texas Auditor. The geographic service market for this specific service is the Austin area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on July 28, 1992.

TRD-9210427 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 30, 1992

review of department projects that have the potential to affect natural resources within the jurisdiction of TWC and concerns the development of a system by which information developed by TxDOT and TWC may be exchanged to their mutual benefit. Notice of the proposed new section was published in the July 14, 1992, issue of the *Texas Register* (17 TexReg 5012). The public hearing will be held at 9 a.m. on Friday, August 21, 1992, in the first floor hearing room of the DeWitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make oral comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Written comments on the proposal may be submitted to Roland Gamble, P.E., Director, Division of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701. Copies of the proposed new section are available from Mr. Gamble at (512) 475-0701.

Issued in Austin, Texas on July 30, 1992.

TRD-9210429 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: July 30, 1992

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Texas Water Commission
Public Hearing Notice

The Texas Water Commission will conduct a public hearing beginning at 9 a. m., Friday, August 21, 1992, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, in order to receive testimony concerning the proposed amendment to 31 Texas Administrative Code (TAC) §305.521 regarding adoption by reference of a memorandum of understanding between the Texas Department of Transportation and the Texas Water Commission.

The memorandum concerns the Texas Water Commission's assessment and regulation of water quality impacts resulting from certain transportation projects initiated by the Texas Department of Transportation.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the memorandum. Written testimony which is submitted prior to or during the public hearing will be included in the record. The commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions should be addressed to Hank Smith, Texas Water Commission, Watershed Management Division, P.O. Box 13087, Austin,

Texas 78711-3087 or call (512) 463-7790.

A limited number of the memorandum are available for review in the Texas Water Commission Library, Room B-20 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin. A copy of the memorandum may be obtained upon written request from Hank Smith at the above address. There are no charges for the prehearing copies of the memorandum; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on August 3, 1992.

TRD-9210530 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: August 3, 1992

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Request for Proposal

The Texas Water Commission (TWC) announces that it wishes to retain the services of a consultant to perform remedial investigation/feasibility studies (RI/FS) at two State Superfund sites. These sites are known as the JCS Company and Jerrell B. Thompson Battery State Superfund sites located in Van Zandt County. Contingent upon approval by the TWC, the consultant's services may be extended to include follow-on architectural/engineering activities at one or both of the sites if and when funds become available. This project will be conducted by the TWC pursuant to §361.185 of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.001 et seq (Vernon's Supplemental 1990); as well as any rules promulgated pursuant to this section by the TWC in Chapter 335 of the Texas Administrative Code, concerning the hazardous waste facility assessment and remediation program, commonly referred to as State Superfund.

The TWC may negotiate with potentially responsible parties (PRPs) to execute activities in this solicitation. Accordingly, all future TWC activities are subject to the outcome of those negotiations with the PRPs.

Objective. The objectives of the investigation and feasibility studies are to: characterize and identify the site in terms of wastes present; lateral and vertical extent of contamination in surface waters, ground waters, sediments, and soils; rate and direction of waste migration; target receptors (population at risk, threatened resources, sensitive ecosystems); site geology and hydrology; and develop and evaluate alternative remedial measures considering economic feasibility, technological feasibility, environmental impacts, and timeliness of completion, and offer recommendations regarding the most feasible remedial alternatives.

Budget and Schedule. The maximum budget allowable will be consistent with the specific scope of work as determined by the TWC. Budgeted funds to perform each RI/FS is \$380,000 for the JCS Company site and \$310,000 for the Jerrell B. Thompson Battery site for a combined total of \$690,000.

Submittal Information. Microfiche copies of relevant files are available through Sheldon Seibel, Records and Library Services Section, (512) 463-7831. A copy of the

request for proposal (RFP) may be obtained in three ways: by sending a regular or certified letter requesting a copy of the RFP to: Scott T. Crouch, Superfund Investigation Section, Pollution Cleanup Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Upon receipt, the TWC will transmit the RFP to the potential offeror by certified mail; by sending an overnight or expedited delivery letter requesting a copy of the RFP to Scott T. Crouch, Superfund Investigation Section, Pollution Cleanup Division, Texas Water Commission, 12118 North IH-35, Messenger Building B, Austin, Texas 78753, with a prepaid self-addressed overnight or expedited delivery envelope to accommodate approximately five pounds of 8 1/2" by 11" material; or in person with a signed letter of receipt at Technical Park Center, Messenger Building B, 12118 IH-35 North, Suite 101, Austin.

Mr. Crouch is the designated person to whom proposals may be made. Additional information may be obtained by calling (512) 908-2486. Six copies of each proposal must be received at the address listed in the above items before 5 p.m., September 28, 1992, which is the closing date for offers. All statements submitted in response to this request must address the items as described in the RFP. Any and all information submitted by an offeror in variance with the RFP instructions will not be reviewed or evaluated. All contracting procedures shall be conducted in accordance with all applicable state laws.

Upon submittal, the proposals shall become the property of the State of Texas. The contents of the proposal shall be considered as part of the public record unless otherwise identified by the consultant. The submittal of confidential or proprietary information should be made under separate cover on or before the due date. Confidential submittals should be limited and must include an explanation of the basis for confidentiality. TWC reserves the right to reject or return confidential information.

Issued in Austin, Texas, on August 3, 1992.

TRD-9210529 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: August 3, 1992



1992 Publication Schedule for the Texas Register

Listed below are the deadline dates for the September-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.
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	Wednesday, July 8	Thursday, July 9
53 Friday, July 17	SECOND QUARTERLY INDEX	
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 Friday, January 1	Monday, December 28	Tuesday, December 29

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is \$5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 1.9% service charge. For more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

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