

Texas Register

Volume 17, Number 61, August 14, 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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POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

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- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the **Texas Register** six months after proposal publication date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

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 TRD number.

Texas Administrative Code

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

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

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

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



a section of the
Office of the Secretary of State
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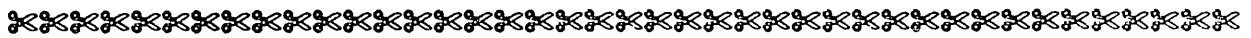
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*The Texas Register Readers Choice Award
continues with this issue!*

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 third category of artwork, featuring submissions from children in seventh through ninth grade. Also in this issue we begin publishing artwork from students in grades ten through twelve. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "10-1" will indicate that the picture is the first submission in the tenth through twelfth 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.

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1991 - 1992 Texas Register Readers Choice Award.

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

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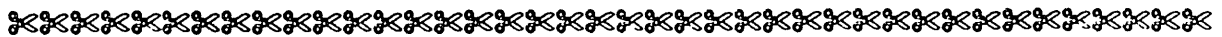
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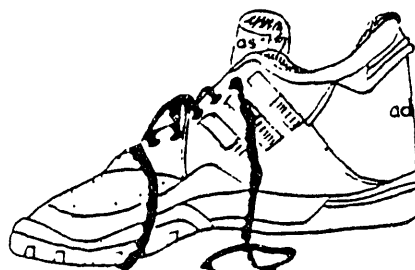
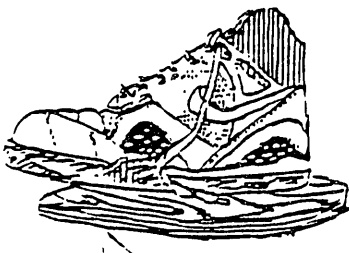
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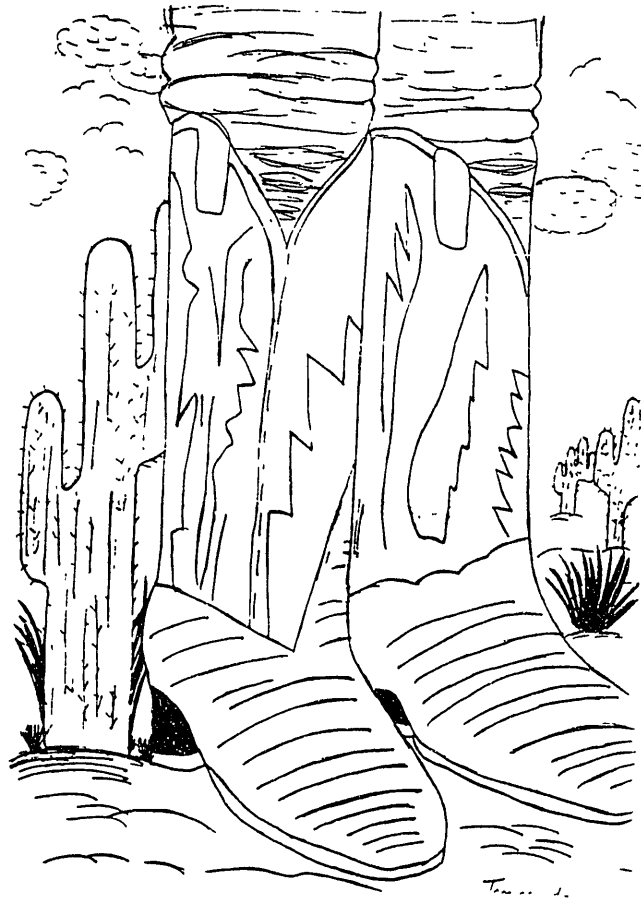
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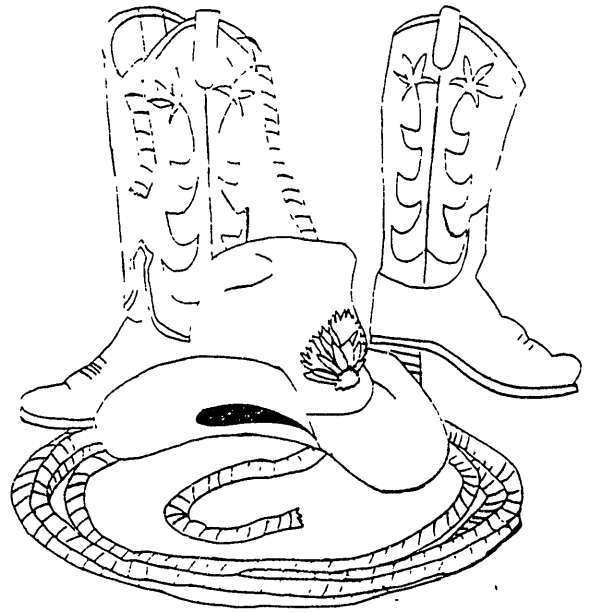


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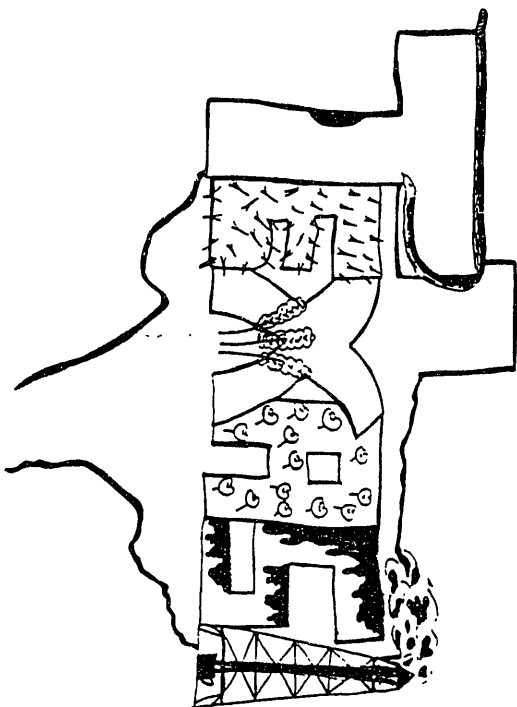




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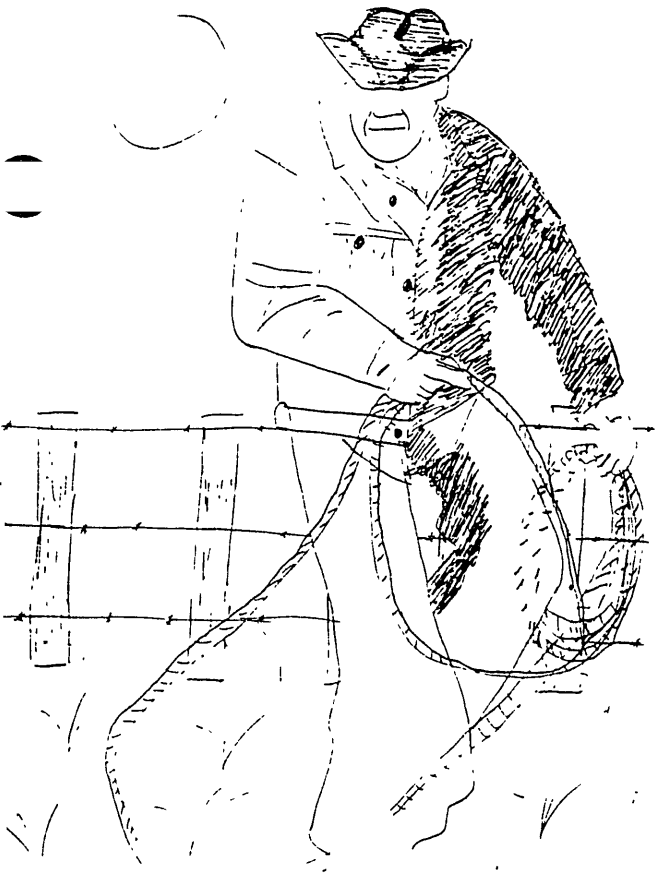
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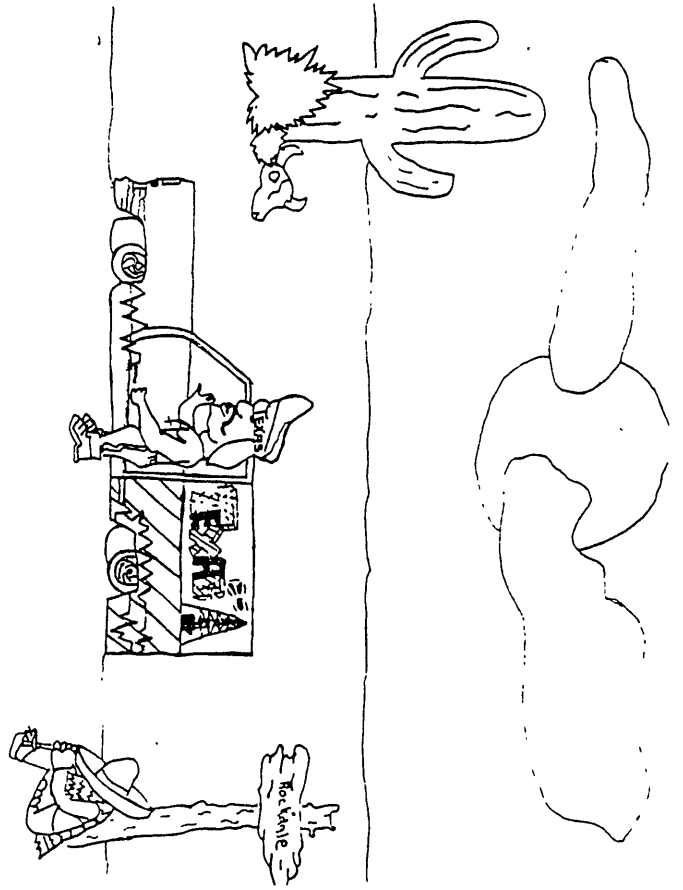
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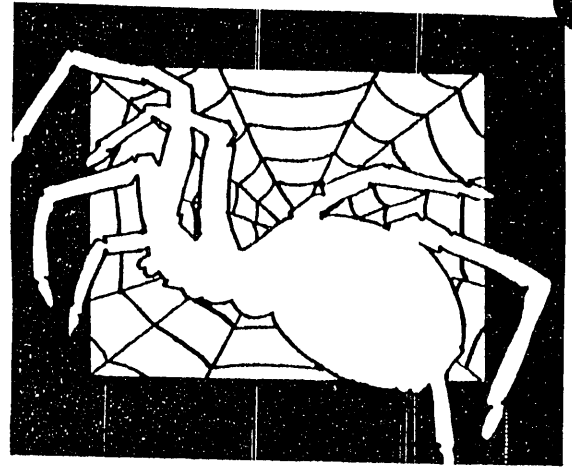
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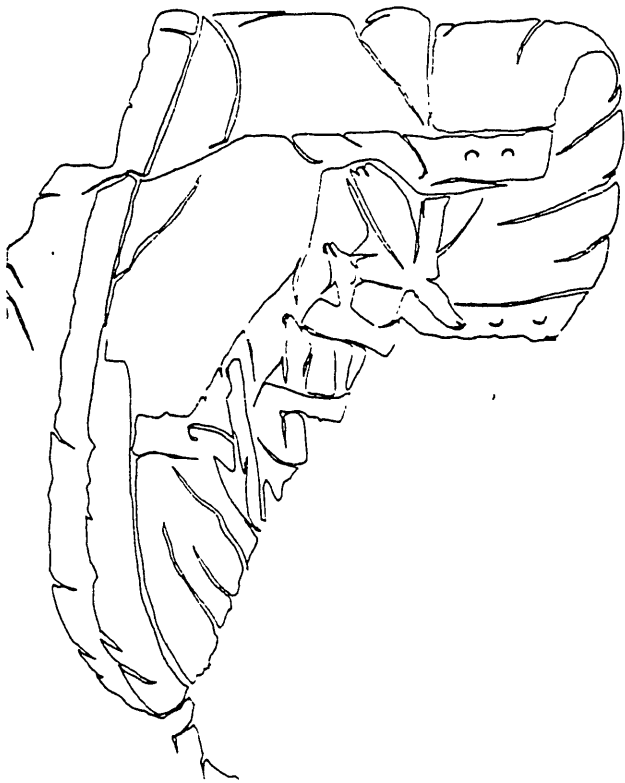
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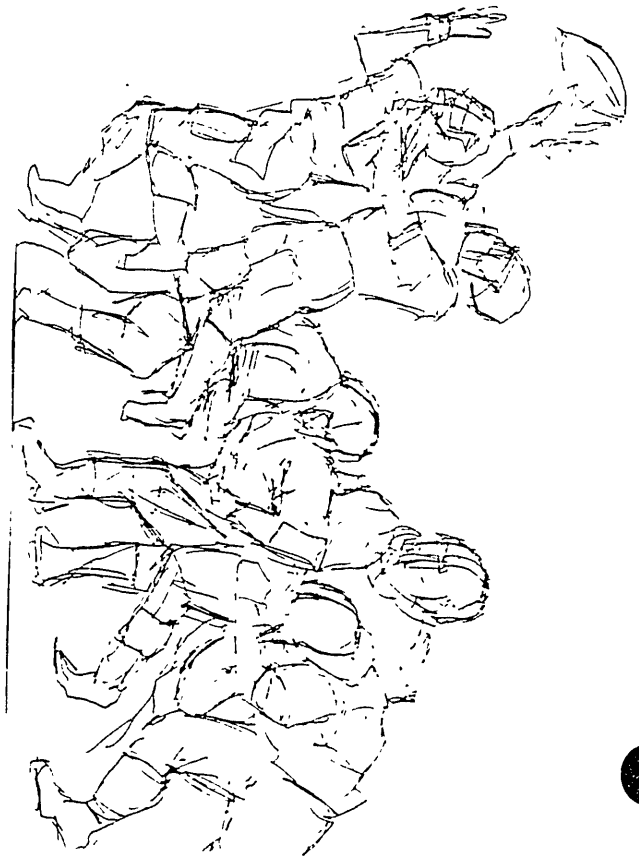
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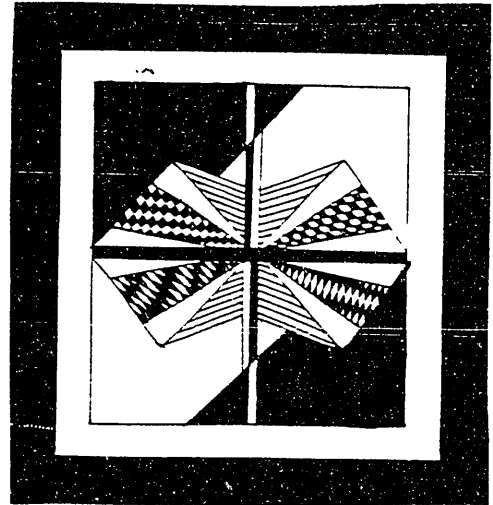
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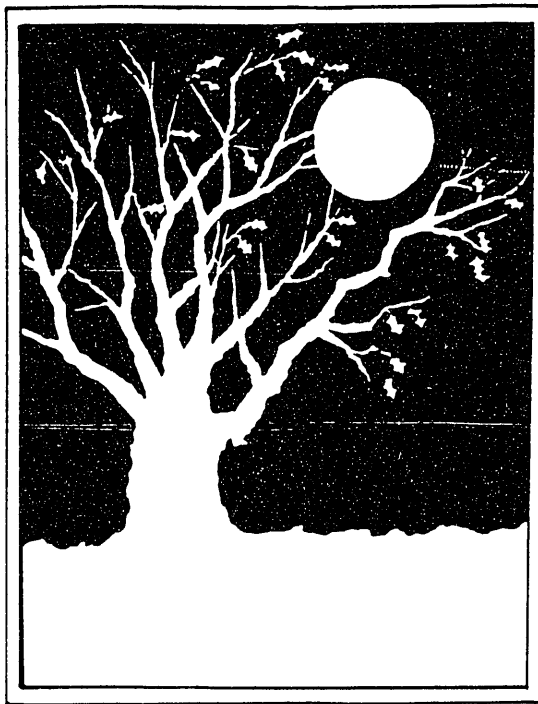


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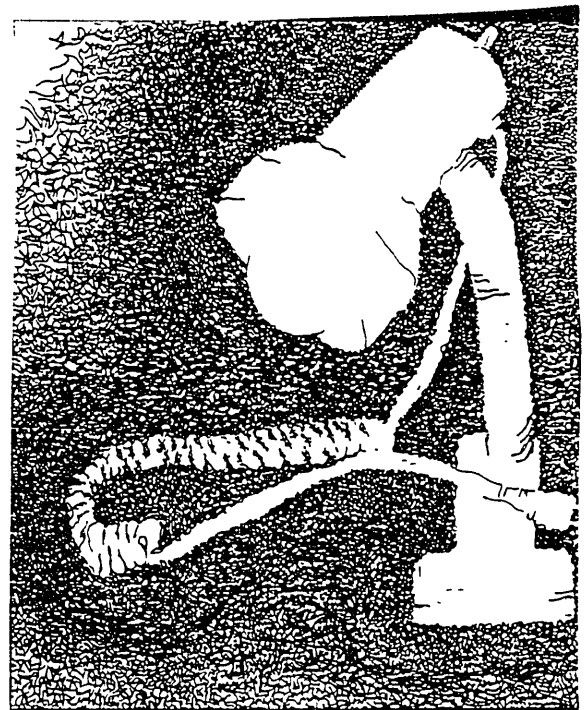


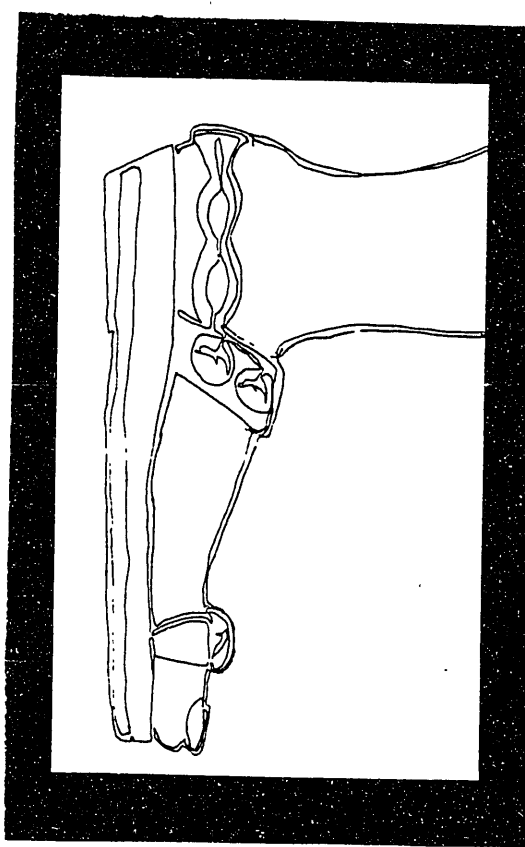
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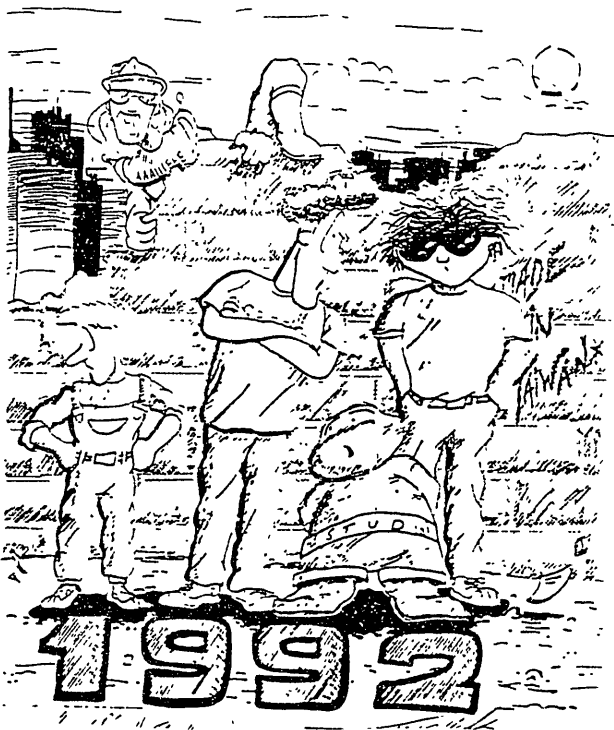


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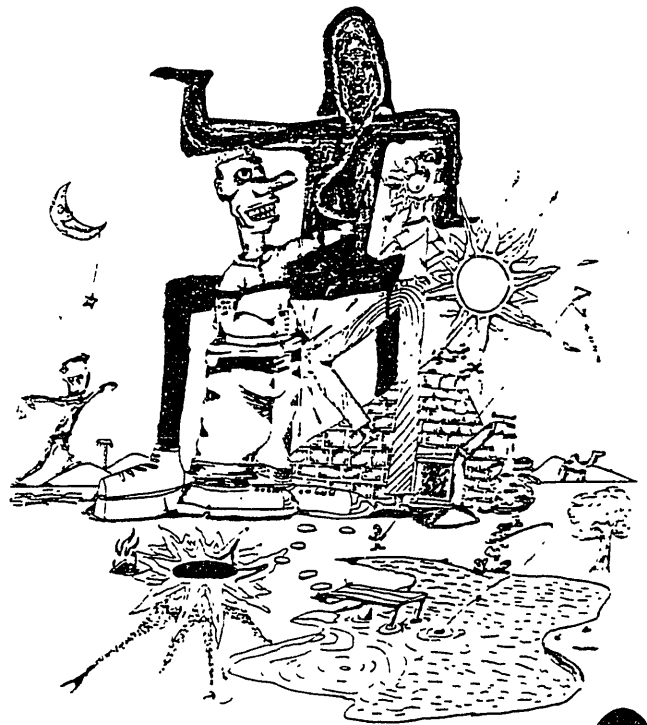


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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made July 29, 1992

To be a member of the **Southern Regional Education Board** for a term to expire June 30, 1996: The Honorable Carl A. Parker, Texas Senate, P.O. Box 12068, Austin, Texas 78711. Senator Parker is being reappointed.

To be a member of the **Texas Turnpike Authority Board of Directors** for a term to expire February 15, 1993: Nathelyne A. Kennedy, 318 Teal Lane, Sugar Land, Texas 77478. Ms. Kennedy will be filling the unexpired term of Charles R. Matthews of Garland who resigned.

To be a member of the **Angelina and Neches River Authority Board** for a term to expire September 5, 1997: Barbara H. Green, P.O. Box 1989, Jacksonville, Texas 75766. Ms. Green will be replacing Steve Lilly of Nacogdoches whose term expired.

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1997: Gregg S. Wilkinson, Ph.D., 2335 Avenue L, Santa Fe, Texas 77510. Dr. Wilkinson will

be replacing Dr. Robert Daniel Smith of Austin whose term expired.

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1997: James Daniel Cox, M.D., 2043 Goldsmith, Houston, Texas 77030. Dr. Cox will be replacing Dr. Jack Ramsey of Abilene whose term expired.

To be a member of the **Texas Rehabilitation Commission** for a term to expire August 31, 1997: Dora L. Gonzales, M.D., 10402 Country Breeze, San Antonio, Texas 78240. Dr. Gonzalez will be replacing Emanuel Bodner of Houston whose term expired.

To be a member of the **Radiation Advisory Board** for a term to expire April 16, 1997: Louis H. Cadena, D.D.S., 901 Bedell, Suite D, Del Rio, Texas 78840. Dr. Cadena will be replacing Dr. Joseph M. Kenworthy of Gatesville whose term expired.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1996: Amelie G. Ramirez, 3506 Hunters Gate, San Antonio, Texas 78230. Dr. Ramirez will be replacing Clay Dahlberg of Hunt whose term expired.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1994: Jacqueline S. Martin, 11983 Bob White Drive, #845, Houston, Texas 77035. Ms. Martin is being appointed to a new position pursuant to Senate Bill 1460, 72nd Legislature.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1996: Marnie L. Abernathy-McKnight, 2470 Five Mile Parkway, Dallas, Texas 75233. Dr. Abernathy-McKnight will be replacing Ernest Deal of Houston whose term expired.

Appointments Made August 6, 1992

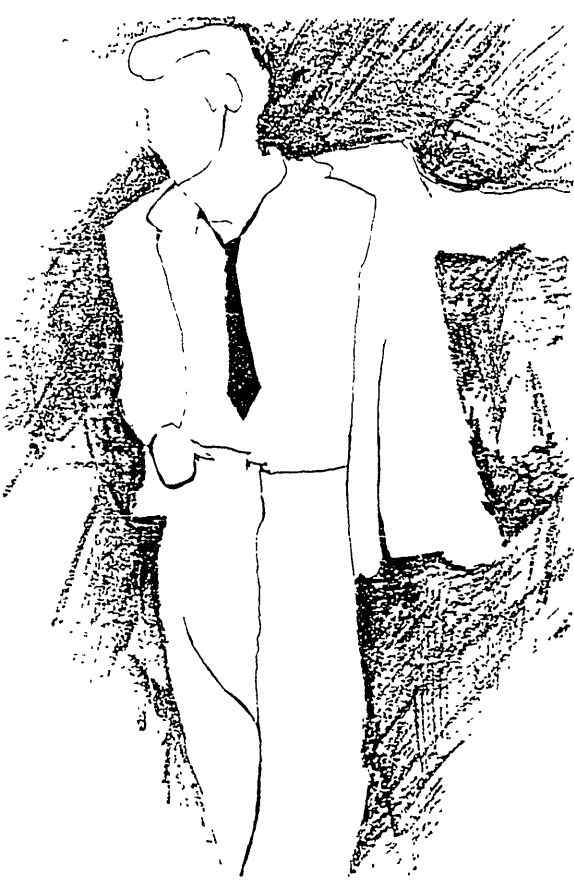
To be a member of the **Governor's Advisory Committee on Immigration and Refugees** for a term to expire February 1, 1993: Laura Carrillo-Alvarado, 2549 Dunoon Drive, El Paso, Texas 79925.

Issued in Austin, Texas, on August 7, 1992.

TRD-9210806

Ann W Richards
Governor of Texas

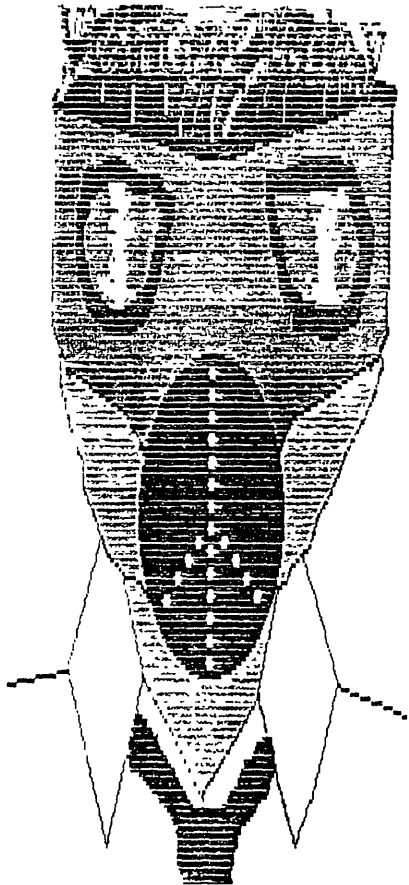
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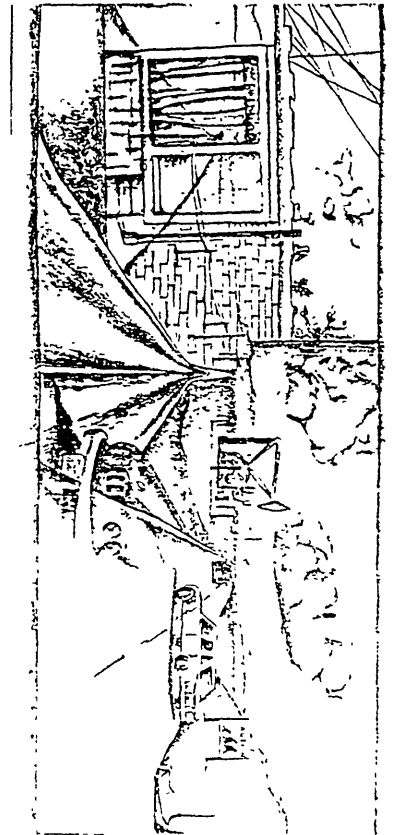
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Emergency Sections

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

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

TITLE 31. NATURAL RE-SOURCES AND CON-SERVATION

Part IX. Texas Water Commission

Chapter 281. Applications Processing

- 31 TAC §§281.2, 281.3, 281.5, 281.17, 281.18, 281.21

The Texas Water Commission is renewing the effectiveness of the emergency adoption of amended §§281.2, 281.3, 281.5, 281.17, 281.18, and 281.21, for a 60-day period effective August 8, 1992. The text of amended §§281.2, 281.3, 281.5, 281.17, 281.18, and 281.21 was originally published in the August 8, 1992, issue of the *Texas Register* (17 TexReg 2647).

Issued in Austin, Texas, on August 7, 1992.

TRD-9210835 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: August 8, 1992

Expiration date: October 7, 1992

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





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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 XIII. Texas Incentive and Productivity Commission

Chapter 117. Administrative Guidelines for Registration of Real Estate Programs

- 1 TAC §§275.1, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, 275.21

The Texas Incentive and Productivity Commission proposes amendments to §§275.1, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, and 275.21, concerning the Productivity Bonus Program. Section 275.1 is changing three definitions and adding a new definition; §§275.7, 275.9, 275.11, 275.13, 275.15, and 275.17 are changing the word "implementation" to "fiscal"; §275.11 is clarifying the legislative intent of required level of services; §275.13 is clarifying agency certification process; §275.15, is clarifying agency application process; §275.17 is clarifying commission approval of the amount of employee bonuses awarded and the definition of pro rata share; §275.19 is consolidating language regarding awards to agency and divisions; §275.21 is deleting language regarding awards to agencies and adding language regarding distribution of the remainder of savings.

M. Elaine Powell, 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.

Ms. Powell 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 facilitate participation in our cost saving program. 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 M. Elaine Powell, Executive Director, Texas Incentive and Productivity Commission, P.O. Box 12482, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 6252-29a, §1, which provide the Texas Incentive and Productivity Commission with the authority to promulgate rules for Productivity Bonus Program.

§275.1. Definitions for the Productivity Bonus Program. The following words and terms, when used in this chapter, shall pertain only to the Productivity Bonus Program and shall have the following meanings, unless the context clearly indicates otherwise.

Fiscal [Implementation] Year—The fiscal year during which the agency or division puts the concepts outlined in the agency's or division's productivity plan into effect.

Productivity Bonus Account—An account created by the state treasurer for each state agency or division [participating] within [in] the productivity bonus [program] fund.

Productivity bonus fund or Fund 578-A—A fund created for each agency to transfer savings for the purposes of this program. At the end of the fiscal year the amount of certified savings is transferred to the appropriate accounts within this fund.

Productivity Bonus or Productivity Bonus Award—A cash bonus awarded to an eligible state agency, division of that agency, or employees thereof after a productivity plan has been successfully implemented and proven to save money in recognition of increased productivity.

Verification Period—The [90-day] period following the [implementation year] submission of the agency's application for approval of a productivity bonus award during which the commission [verifies] analyzes the nature and the amount of the savings certified by the executive director of the [an] agency and acts on the agency's application [decides whether or not to grant a productivity bonus award].

§275.7. Plan Revisions.

(a) An agency may make reasonable revisions to its approved productivity plan during the fiscal [implementation] year. Before proceeding with implementation, an agency requesting such a revision to its approved plan shall notify the commission in writing. Any such request received by the commission shall be deemed to have been approved 30 days after receipt unless the commission staff requests additional information or indicates that the request should be reviewed by commission.

(b) (No change.)

§275.9. Application.

(a) Timing. No later than August 1 of the fiscal [implementation] year, the executive director may apply for a productivity bonus award.

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

§275.11. Qualifications for Award.

(a) Biennium appropriation divided. To qualify for a productivity bonus award, a state agency or division whose appropriation was specifically divided between fiscal years, must demonstrate to the commission that the agency or division operated at less cost during the fiscal [implementation] year than the amount appropriated to that agency or division for that fiscal year with no decrease in the level of services required to be rendered by the agency or division during that year [agency's or division's required level of services].

(b) Biennium appropriation not divided. If the appropriation for the agency's or division's fiscal biennium was not specifically divided between fiscal years, the amount reasonably attributable to the fiscal [implementation] year from the total appropriation shall be the basis of evaluation as to whether or not the agency or division operated for less cost with no decrease in the level of services required to be rendered by the agency or division during that year [required level of service].

(c)-(d) (No change.)

§275.13. Savings Certification and Transfer.

(a) Certification. No later than August 1 of the fiscal [implementation] year, the executive director shall certify the amount of savings realized by the agency's or division's productivity plan to the comptroller of public accounts by submitting a copy of the agency's application for commission approval of a productivity bonus award.

(b) Transfer of savings to the productivity bonus fund [account]. The comptroller of public accounts shall transfer the [that] amount of certified savings from the savings measurement account established by the state agency according to the allo-

cations specified in Texas Civil Statutes, Article 6252-29a, §3.005(b): one-fourth of that amount to the commission's productivity bonus account for administration of the program and the remaining three-fourths to the agency's productivity bonus account. [according to the allocations described in the General Appropriations Act].

(c) Savings measurement account adjustments. In the event that the certified savings [revenue] amount differs from the balance in the savings measurement account, the agency shall use the procedures outlined in the General Appropriations Act.

(d) Additional certifications. In the event that the agency is unable to certify savings pertaining to the closing months of the fiscal year, the agency may certify these savings at the end of the fiscal year.

§275.15. Application Review.

(a) Timing. Within 60 days after the end of the fiscal [implementation] year, the commission shall review the application of the state agency.

(b) Determination of costs. The commission shall compare the expenditures of the state agency or division with the agency's or division's total appropriation, if appropriate, and shall determine the amount by which the agency or division has reduced its cost of operations during the fiscal [implementation] year.

(c)-(d) (No change.)

(e) Notification to agency. [If the commission determines that a state agency or division qualifies for a productivity bonus,] The [the] commission shall notify the executive director of the agency of its action on the agency application no later than 90 days after the end of the fiscal [implementation] year.

§275.17. Awards to Employees.

(a) Amount. If the commission approves an agency or division for a productivity bonus award, the commission shall award to the employees of the agency or division an amount not to exceed 25% of the amount in the agency's or division's productivity bonus account. The commission may award an amount less than 25% if the executive director making such a request when the agency or division plan is submitted, or if the commission believes circumstances warrant.

(b) (No change.)

(c) Pro rata share of bonus. A current employee who has worked for the agency or division for less than the full fiscal [implementation] year or on a part-time basis is entitled to a pro rata share

based on the fraction of the fiscal [implementation] year and the average fraction of the work week that the employee worked in the agency or division.

(d) Distribution. The awarded amount shall be distributed in equal shares proportionally related to the amount of time worked during the fiscal year to the eligible current employees of the agency or division.

(e) (No change.)

(f) Timing. Bonuses shall be distributed to eligible employees within 90 days of the agency's receipt of commission notification of approval of a productivity bonus award unless the commission approves an agency's request for alternate timing.

§275.19. Awards to fan Agencies/Divisions [a Division].

(a) Distribution to agency/division. If the commission approves a productivity bonus award for a division of a state agency, or an entire agency, the balance of the amount in the agency's or division's productivity bonus account remaining after the award to employees shall be distributed between the state agency and the fund from which the original division appropriation was made.

(b) Amount [Appropriation to agency]. One-third of the balance after award to employees shall be appropriated to that agency to be used by the administration of the agency during the subsequent fiscal year to further agency productivity. [The remainder shall be credited to the appropriate fund.]

§275.21. [Awards to Agencies] Remainder of Savings. Distribution to appropriate fund. The amount of savings remaining in the agency or division productivity bonus account after payment of employee bonuses and distribution to the agency shall be credited to the appropriate fund.

[(a) Distribution. If the commission approves a productivity bonus award for an entire agency, the balance of the amount in the agency's productivity bonus account remaining after the award to employees, shall be distributed between the state agency and the fund from which the agency's original appropriation was made.

[(b) Appropriation. One-third (1/3) of the balance after award to employees shall be appropriated to that agency to be used by the administration of the agency during the subsequent fiscal year to further agency productivity. The remainder shall be credited to the appropriate fund.]

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 10, 1992.

TRD-9210848

M. Elaine Powell
Executive Director
Texas Incentive and
Productivity
Commission

Earliest possible date of adoption: September 14, 1992

For further information, please call: (512) 475-2393

Chapter 117. Administrative Guidelines for Registration of Real Estate Programs

• 7 TAC §117.3

The State Securities Board proposes an amendment to §117.3, concerning suitability of the participant in a real estate program to reflect a recent change by the North American Securities Administrators Association, Inc. (NASAA).

Michael Northcutt, director, securities registration division, has determined that for the first five-year period the section in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Northcutt also has determined that for each year of the first five years the section in effect the public benefit anticipated as a result of enforcing the section will be continued uniformly with other states in applying standards for registration of real estate program offerings. 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 Denise Voight Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§117.3. Suitability of the Participant.

(a) (No change.)

(b) Sales to appropriate persons. The sponsor and each person selling program interests on behalf of the sponsor or program shall make every reasonable effort to assure that those persons being offered or sold the program interests are suitable, considering the standards set forth as required in subsection (a) of this section, and the program interests are appropriate for the customers' investment objectives and financial situation. The sponsor or his repre-

sentatives shall ascertain that the investor can reasonably benefit from the program, and the following shall be evidence thereof:

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

(4) the participant is able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, unless the securities commissioner approves a lower suitability standard, participants shall have a minimum annual gross income of \$45,000 [\$30,000] and a net worth of \$45,000 [\$30,000], or in the alternative, a net worth of \$150,000 [\$75,000]. As provided in subsection (a) of this section, higher suitability standards may be required. In the case of sales to fiduciary accounts, the suitability standards shall be met by the fiduciary, or by the fiduciary account, or by a donor who directly or indirectly supplies the funds to purchase the program interests. Net worth shall be determined exclusive of home, home furnishings, and automobiles.

(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 August 6, 1992.

TRD-9210790

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: September 14, 1992

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

Chapter 121. Administrative Guidelines for Registration of Oil and Gas Programs

• 7 TAC §121.4

The Securities Board proposes an amendment to §121.4, concerning suitability of the participant in an oil and gas program to reflect a recent change by the North American Securities Administrators Association, Inc. (NASAA).

Michael Northcutt, director, securities registration 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. Northcutt 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 continued uniformity with other states in applying standards for registration of oil and gas program offerings. 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 Denise Voigt Crawford, State Securities

Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§121.4. Suitability of the Participant.

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

(c) Suitability standards for other types of programs.

[(1)] In the case of [production purchase or] income programs or programs that utilize at least 90% of capital contributions and funds borrowed (excluding organization and offering expenses) in providing completion financing, debt financing, or making other types of oil and gas investments, unless circumstances warrant and the securities commissioner establishes another standard, the participant shall have:

(1) a net worth of \$150,000 [\$100,000] or more (exclusive of home, furnishings, and automobiles); or

(2) a net worth of \$45,000 [\$30,000] (exclusive of home, furnishings, and automobiles) and a taxable income in the current year of \$45,000 [\$30,000] or more.

[(2)] In the case of programs that utilize at least 90% of capital contributions and funds borrowed (excluding organization and offering expenses) in providing completion financing, debt financing, or making other types of oil and gas investments, unless the circumstances warrant and the securities commissioner establishes another standard, the participant shall have:

[(A)] a net worth of \$150,000 or more (exclusive of home, furnishings, and automobiles); or

[(B)] a net worth of \$40,000 or more (exclusive of home, furnishings, and automobiles) and a taxable income in the current year of \$40,000 or more.]

(d)-(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 August 6, 1992.

TRD-9210791

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: September 14, 1992

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

Chapter 133. Forms

• 7 TAC §133.29

The State Securities Board proposes an amendment to §133.29, concerning intrastate exemption notice for sales under §109.13(1). The purpose of the amendment is to reflect the correct mailing address of the State Securities Board.

Peggy Peters, director, dealer registration 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.

Ms. Peters 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 that the form will reflect the correct mailing address of the State Securities Board. 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 Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§133.29. *Intrastate Exemption Notice for Sales Under Regulation 109.13(1)*. The State Securities Board adopts by reference the intrastate exemption notice for sales under Regulation 109.13(1) as amended in October 1992 [November, 1987]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210793

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: September 14, 1992

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

Chapter 141. Administrative Guidelines for Registration of Equipment Programs

• 7 TAC §141.3

The State Securities Board proposes an amendment to §141.3, concerning suitability of the participant in an equipment program to reflect a recent change by the North American Securities Administrators Association, Inc. (NASAA).

Michael Northcutt, director, securities registration 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. Northcutt 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 continued uniformity with other states in applying standards for registration of equipment program offerings. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§141.3. Suitability of the Participant.

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

(c) The participant must be able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, unless the securities commissioner approves a lower suitability standard, participants shall have a minimum annual gross income of \$45,000 [\$30,000] and a net worth of \$45,000 [\$30,000] or, in the alternative, a net worth of \$150,000 [\$75,000]. As provided in subsection (a) of this section, higher suitability standards may be required. In the case of sales to fiduciary accounts, the participant shall mean the fiduciary account and/or the donor who directly or indirectly supplies the funds to purchase the program interests. Net worth shall be determined exclusive of home, home furnishings, and automobiles.

(d)-(e) (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 6, 1992.

TRD-9210792

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: September 14, 1992

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

TITLE 22. Examining Boards

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Dental Laser Use

• 22 TAC §109.301

The Texas State Board of Dental Examiners proposes new §109.301, concerning requirements. The new section states that a laser may be used in the treatment of a dental patient only by a licensed dentist and that a laser may be used to treat a dental patient for soft tissue dental applications.

C. Thomas Camp, 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.

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information. 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 Mel Ling Clendennen, Texas State Board of Dental Examiners, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

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

§109.301. Requirements.

(a) A laser may be employed in the treatment of a dental patient only by a licensed dentist. A dentist may not delegate to dental auxiliaries any laser procedure or treatment.

(b) A laser may be used or advertised to treat a dental patient for soft tissue dental applications. A sub-gingival curet-

tage shall be considered a soft tissue application.

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-9210731

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

Earliest possible date of adoption: September 14, 1992

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

• 22 TAC §109.302

The Texas State Board of Dental Examiners proposes new §109.302, concerning procedures. This new section outlines the procedures patients, dental assistants, dental hygienists, dentists, and all other office personnel must adhere to while in the vicinity of the laser operatory. Also, that laser operatories must have a sign outside the door indicating that a laser is in use.

C. Thomas Camp, 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.

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

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

§109.302. Procedures.

(a) Patients, dental assistants, dental hygienists, dentists, and all other office personnel in the vicinity of the laser operatory must wear protective glasses appropriate to filter out the working and/or aiming beam wavelengths. Each patient must be adequately protected for the specific wavelength(s) being used.

(b) Laser operatories shall have a sign placed just outside the door indicating that a laser device is in use. This sign must detail the potential danger of walking into a laser operator without proper eye protection.

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-9210730 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: September 14, 1992

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

◆ ◆ ◆
• 22 TAC §109.303

The Texas State Board of Dental Examiners proposes new §109.303, concerning approval of training. This new section states that a dentist must provide proof to the TSBDE of each laser type to be used, the completion of at least eight hours of training.

C. Thomas Camp, 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.

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide for the protection of public health and welfare and enhance the quality of dental health care in Texas, and to provide the public access to information. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

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

§109.303. Approval of Training. Prior to commencing use of a laser for dental purposes, a dentist must provide proof to the board for each laser type to be used that at least eight hours of training in the use of each type has been completed. Training shall be performed by a person(s) qualified

to do so on the particular type of laser to be used.

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-9210729 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: September 14, 1992

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

◆ ◆ ◆
TITLE 28. INSURANCE
Part II. Texas Workers'
Compensation
Commission

Chapter 114. Self-Insurance

• 28 TAC §114.1-114.15

The Texas Workers' Compensation Commission proposes new §§114.1-114.15, concerning self-insurance regulation. These sections clarify who can become self-insured, how they apply, and what financial, safety, and other requirements exist before an employer can become self-insured. These sections also describe the process of certification to be self-insured and what happens when a self-insured employer becomes impaired or is removed from self-insured status.

Drew Thigpen, associate director, financial management, has determined that for the first five-year period the sections are in effect with one exception, there will be no fiscal implications, beyond those specified in the Act for state or local government or small businesses as a result of enforcing or administering the sections. The exception is that the commission will incur added expense to provide on-site inspections of applicants' safety programs.

Mr. Thigpen 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 implementation of the self-insurance program as adopted by the legislature in 1989. This is a voluntary program, so there is no anticipated economic cost to persons who are required to comply with the sections as proposed. However, the employers who choose to participate and who do not currently have an effective safety program will have added costs to develop and implement one.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The new sections are proposed under Texas Civil Statutes, Article 8308-2.09(a), which authorize the commission to adopt rules necessary to administer the Act and Texas Civil

Statutes, and Article 8308-3.51-3.70, which require and allow the commission to adopt rules to describe requirements for employers to become self-insured, to establish what will occur if an employer becomes impaired, and to provide time-lines for appeals from denials of employer applications.

§114.1. Purpose.

(a) The provisions of this chapter are promulgated pursuant to Article 8308-3.51-3.70 to explain and enforce provisions related to the self-insuring of liability and to guarantee full and timely payment of compensation benefits by self-insurers.

(b) The provisions of this chapter apply to private employers in the State of Texas. They do not apply to the state or to political subdivisions as defined in Article 8309h, §1.

(c) These rules provide guidance and requirements in addition to those requirements imposed by the Act and other commission rules.

§114.2. Definitions

(a) The following words and terms are defined in Article 8308-3.51, and are so used in this chapter:

- (1) association;
- (2) director;
- (3) impaired employer;
- (4) incurred liability;
- (5) qualified claims servicing contractor.

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

(1) Certificate—A certificate of authority to self-insure issued by the commissioners under Article 8308-3.51(d) which entitles an employer to be a self-insurer and is valid only for the persons, firms, or corporations named on the certificate.

(2) Claims contractor—A qualified claims servicing contractor.

(3) Division—the Division of Self-Insurance of the Texas Workers' Compensation Commission.

(4) Excess insurance—Insurance that an employer purchases to pay claim costs that exceed the employer's retention amount up to a specified limit.

(5) Retention—A predetermined amount or level under an excess insurance policy after which the excess insurer will reimburse the self-insurer or the association for the payment of benefits up to the excess insurer's limit of liability.

(6) Self-insurer—An employer who has been granted and holds a valid certificate.

(7) Trust fund—The Texas certified self-insurer guaranty trust fund created by the fee assessed by the association for emergency payment of the compensation liabilities of an impaired employer.

§114.3. Initial Application Form and Financial Information Requirements.

(a) Employers shall make an application by filing:

(1) a completed and signed Form TWCC-160 and required attachments; and

(2) the appropriate one of the following:

(A) if required to file a 10-K by the Security and Exchange Commission (SEC), the applicant's Form 10-K for the preceding three fiscal years; or

(B) if not required to file a 10-K by SEC, the applicant's independently audited financial statements with the accompanying footnotes and the auditor's opinion for the preceding three fiscal years. The independent auditor must be a certified public accountant (CPA) who is not an employee of the applicant.

(b) Incomplete applications may be returned to the applicant.

(c) The sworn affidavit required on the TWCC-160 also applies to all attachments.

(d) If the report under subsection (a)(2) of this section is dated more than six months prior to the date of the application, an interim report may be required.

(e) Applicants will be evaluated for stability and financial strength. In addition to the factors specified in Article 8308-3.56, the following financial measures will be considered:

(1) liquidity ratio;

(2) ratio of tangible net worth to annual self-insurance retention;

(3) ratio of current assets to current liabilities;

(4) ratio of tangible net worth to long term debt;

(5) ratio of tangible net worth to annual standard compensation premium;

(6) ratio of tangible net worth to sales;

(7) ratio of tangible net worth to total liabilities;

(8) cash flow;

(9) working capital; and

(10) profitability.

§114.4. Security Requirements.

(a) Security may be a combination of any of the following.

(1) Surety bond. The surety bond is issued by a company authorized to conduct such business in Texas and possessing a current A.M. Best Rating of B+ or better or possessing a Standard and Poor's rating of claims paying ability of A or better.

(2) Security deposit of cash, bonds, or other evidence of indebtedness issued, assumed, or guaranteed by the United States of America or the State of Texas. Any such securities shall be deposited with the state treasurer pursuant to a trust agreement prescribed by the division.

(3) Irrevocable letter of credit issued by a Texas State chartered bank or a federally chartered bank with a branch office in Texas. The bank shall have an "Aaa," "Aa," or "A" long-term debt rating in the current monthly edition of "Moody's Statistical Handbook" or an "AAA," "AA," or "A" long-term investment grade rating in the current quarterly edition or monthly supplement of "Financial Institutions Rating" prepared by Standard and Poor's Corporation. If the bank's rating subsequent to issuing the letter of credit falls below the acceptable rating, the self-insurer shall replace the letter of credit within 60 days with a new letter issued by a bank with an acceptable rating.

(b) Bonds and irrevocable letters of credit must be in a form approved by the director.

(c) Security in the form of cash must be in United States currency.

(d) The amount of security shall in no case be less than the retention amount of the excess insurance required by the director.

(e) The application shall include a letter from the potential guarantor of the security to indicate that security will be provided within 10 days after the commissioners issue a certificate.

(f) The self-insurer shall notify the director if the security bond or letter of credit no longer meets the requirements of subsection (a) of this section. This notice shall be provided in writing to the director within 30 days of that change.

(g) The director may require a substitution of securities in the event that the self-insurer's surety or guarantor no longer meets the requirements of subsection (a) of this section.

§114.5. Excess Insurance Requirements.

(a) The upper limit of liability for a contract or policy of excess insurance shall be in the amount required by the director. The minimum amount the director may require is \$5 million per accident or occurrence.

(b) A contract or policy of excess insurance must be issued by an insurance company authorized by the State of Texas to transact such business and shall include the following provisions:

(1) cancellation requires written notice to the director, return receipt requested or by personal delivery at least 60 days before termination;

(2) nonrenewal requires written notice to the director, return receipt requested or by personal delivery at least 60 days before the end of the policy;

(3) the association may assume the rights and responsibilities of the self-insurer under the policy when the self-insurer does not pay benefits as required under the Act;

(4) all of the following benefits to which the injured employee is entitled under the Act must be applied toward reaching the retention amount:

(A) payments made by the employer;

(B) payments due and owing by the employer;

(C) payments made on behalf of the employer by any form of security as required by the Act or commission rules; and

(D) payments made by the association pursuant to Article 8308-3.70.

(c) The excess insurance carrier must send a letter to the director certifying:

(1) that the self-insurer has a policy of excess insurance which fully complies with the requirements of this section together with a copy of the declarations page of the policy; or

(2) that the policy will be issued to an applicant upon certification.

(d) The self-insurer who elects to cancel or chooses not to renew a policy of excess insurance shall notify the director within 10 days after the self-insurer has notice of the cancellation or termination.

§114.6. Safety Program Requirements. To qualify as an effective safety program, an

employer's safety program must have at a minimum:

(1) one employee who qualifies as a professional source under §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations), to oversee the implementation of the safety program and who has the authority to communicate directly with executive management regarding health and safety issues;

(2) a written safety policy which:

(A) states clearly the commitment of management to the safety program;

(B) requires a worksite analysis of conditions and operations at least annually to identify existing and potential hazards at every site to be covered by self-insurance and to develop appropriate hazard prevention and control measures to abate those hazards;

(C) requires the use of appropriate personal protective equipment by employees and requires training in the proper use and maintenance of such equipment;

(D) contains the procedures to be followed in response to emergencies including medical emergencies, fires, bomb threats, and natural disasters as well as other potential emergencies, such as release of toxic chemicals, associated with the work done at all job sites to be covered by self-insurance;

(E) requires safety and health training addressing the safety and health responsibilities of all employees, supervisors, and managers;

(F) requires at least annually one scheduled and one unscheduled safety inspection of every site to be inspected by the employee described in paragraph (1)(a), of this section, or by another person who qualifies as a professional source under §164.9 of this title;

(G) includes a drug policy that meets the requirements of §169.1 and §169.2 of this title (relating to Criteria for Identifying Extra-hazardous Employers and Notice to Extra-hazardous Employers);

(H) includes a requirement for periodic meetings of a safety committee which includes employee representation, and for receiving and addressing complaints about safety issues from employees;

(I) requires all workplace accidents and injuries to be reported to and investigated by the employee described in paragraph (1)(A) of this section or by a field safety representative defined under §166.109 of this title (relating to Qualification of Field Safety Representatives), working under this employee's direction; and

(J) requires posting of the safety hotline number and associated information as required by commission rules;

(3) a program for monitoring safety trends which:

(A) identifies losses by location, occupation, or job function; and

(B) provides an analysis of those losses based on:

(i) nature, source, and severity of the injury;

(ii) cause of the injury;

(iii) parts of the body affected;^f

(iv) equipment involved in the injury;

(v) number of injuries and fatalities other than occupational diseases; and

(vi) number of occupational diseases.

§114.7. Certification Process.

(a) The division shall request review and approval of the association by forwarding applications to the association, return receipt requested, immediately after the division deems the application complete.

(b) The applicant's financial measures as set forth in §114.3 of this title (relating to Initial Application Form and Financial Information Requirements) will be compared to self-insurers in the same industry or to the norm for each measure for the same industry.

(c) In addition to all statutory and rule requirements, the director shall consider whether, for each financial measure, the applicant:

(1) is comparable to other self-insurers in the same industry, if any; or

(2) exceeds 120% of the industry norm in the same industry.

(d) The director may audit information supplied by an employer applying for a certificate.

(e) The division shall recommend an applicant for certification only with approval of the application by the association. Failure of the association to respond within 40 days of the association receiving the application will be deemed association approval of the applicant being certified.

(f) Within a reasonable time after accepting a completed application packet, the division will recommend to the commissioners approval or denial of the application and supply a complete copy of supporting information including comparisons of financial measures.

(g) After January 1, 1994, the reasonable time referred to in subsection (f) of this section is 60 days.

§114.8. Refusal to Certify an Employer.

(a) When the commissioners determine an application should be denied, the applicant will be notified of the following:

(1) the specific reasons for the denial;

(2) the specific conditions, if any, the applicant must meet to become certified;

(3) that the applicant has a 30-day period from the date the applicant receives the notice to meet the conditions required or provide compelling information to the commission to rebut the reasons for denial; and

(4) the form and format required to notify the commission of the actions taken by the applicant to overcome the denial.

(b) The notice described in subsection (a) of this section shall be:

(1) in writing; and

(2) sent to the contact person, return receipt requested.

(c) The denial becomes final on the 31st day after the applicant received the notice of denial if the applicant has not responded.

(d) When the applicant timely responds to the denial, the commissioners may grant or deny the application by majority vote within 130 days after the applicant received the notice of denial, and such action shall be final immediately. If the commission fails to take action within 130 days after the applicant received the notice of denial, the denial becomes final on the 131st day.

§114.9. Required Annual Safety Program Report and Inspection.

(a) A self-insurer must file with the director, an annual safety report. The annual report must:

(1) be filed with the division as required in §114.11 of this title (relating to Audit Program);

(2) be on the form prescribed by the commission; and

(3) contain:

(A) a summary of the safety and health training provided to management, supervisors, and employees;

(B) an analysis of accident trends;

(C) the safety and health audit findings, recommendations, and changes implemented as a result of those findings and recommendations;

(D) a list of the evaluations and descriptions of the implementation of employee suggestions;

(E) the minutes of safety committee meetings; and

(F) the safety and health goals for the next year.

(b) An employer seeking to obtain or renew a certificate shall have its safety program reviewed and inspected by the commission prior to the issuance or renewal of its certificate. To facilitate this process, the employer shall provide the commission with access to all of the documents related to its safety program and its workers' compensation claims and shall permit the inspection of all of its worksites during working hours.

§114.10. Claims Contractor Requirements.

(a) Claims administration must be performed by an adjuster licensed in Texas to handle workers' compensation claims.

(b) Each contract to provide claims services to a self-insurer must be approved by the director prior to recommending approval of an application to self-insure or, if a self-insurer is changing from one claims contractor to another, prior to the effective date of the new contract.

(c) The claims contractor must promptly investigate each injury and either pay benefits or controvert, as required by the Act and commission rules.

§114.11. Audit Program.

(a) The division shall attempt to audit self-insurers annually but shall audit each self-insurer at least once every three years.

(b) An audit may include, but not be limited to:

(1) any representation made on an initial or renewal application;

(2) payroll and classification;

(3) loss history;

(4) claims administration;

(5) loss reserve;

(6) safety programs;

(7) interviews of the self-insurer, their agents, or employees regarding any matter within their knowledge and pertaining to the obligations of the self-insurer under the Act or commission rules; and

(8) any other issue deemed appropriate by the division.

(c) A written report shall be provided to the self-insurer within 30 days after the audit is completed.

(d) Unreasonable refusal to make the required information available constitutes:

(1) grounds for revocation of the certificate; and

(2) a Class A administrative violation, with each day of noncompliance constituting a separate violation.

§114.12. Required Annual Reports.

(a) Each self-insurer shall file with the division annual reports which include the following:

(1) a claims report in electronic format which is due, beginning in 1994, on or before March 1 and which includes the three preceding calendar years;

(2) a safety report as described in §114.9 of this title (relating to Required Annual Safety Program Report and Inspection) which is due, beginning in 1994, on or before March 1; and

(3) a financial report, filed on the form prescribed by the commission, which is due no later than 60 days prior to the expiration of the certificate.

(b) If any of the reports is more than six months old, an interim report may be required prior to renewal or as the director deems appropriate.

(c) A renewal application will not be complete until all parts of the annual report and any required interim reports are filed.

§114.13. Required Notices to the Director.

(a) A self-insurer that proposes to amend its charter, articles of incorporation, or partnership agreement to change its identity or business structure, or in any other

manner materially alter its status as it existed at the time of issuance of its certificate shall, 90 days prior to the amendment or other action, notify the director in writing of such proposed action and provide the director with a copy of such amendment or other action.

(b) A self-insurer that proposes to cease doing business entirely, or proposes to cease doing business in Texas, or proposes to dispose of, by sale or otherwise, the controlling interest of the business for which the certificate was issued, shall immediately notify the director in writing of such action and the director will notify the commissioners who will act on the notice pursuant to Article 8308-3.65.

(c) A self-insurer shall give written notice to the director of any change in contact person within 10 working days of this change. The notice shall include, the name, title, office address, and telephone number of the new contact person.

(d) A self-insurer shall give written notice to the director at least 30 days prior to any change in the claims contractor. The notice shall include the name, title, office address, and telephone number of the person or persons appointed to administer both the existing cases and the new cases and the location or locations of records required to be kept and maintained pursuant to Article 8308-3.61.

(e) A self-insurer shall notify the director of any change or expected change which will significantly alter the liability or solvency of the self-insurer within 30 days of the self-insurer's knowledge of the change.

§114.14. Impaired Employer. If a self-insurer becomes an impaired employer, the director shall protect the employees of such employer by promptly:

(1) securing the release of the security deposit;

(2) notifying the association to assume the liabilities of the impaired employer and, pursuant to Article 8308-3.70(c), to begin paying benefits out of the trust fund; and

(3) estimating the amount of any additional funds needed to supplement the security deposit and available assets of the impaired employer and advise the association of the amount the association will need to assess each self-insurer to cover the estimated liabilities.

§114.15. Revocation of Certificate of Authority to Self-Insure.

(a) A self-insurer may have its certificate revoked due to:

(1) failure to maintain financial strength;

(2) failure to implement and maintain an effective safety program;

(3) failure to maintain acceptable claim services;

(4) failure to obtain and maintain required security;

(5) failure to obtain and maintain excess insurance as required by the director;

(6) failure to file any required annual or interim report required under §114.12 of this title (relating to Required Annual Reports);

(7) unreasonable refusal to make information available as required under of §114.11 this title (relating to Audit Program);

(8) failure to provide notice as required in §114.13 of this title (relating to Required Notices to the Director); or

(9) failure to comply with any provision of the Act or with any commission rule.

(b) The director may require a self-insurer whose certificate has been revoked or withdrawn to provide a report setting forth the present status of all open claims.

(c) Pursuant to Article 8308-3. 61 and 3.68, the director shall continue to audit the claims of any self-insurer whose certificate has been revoked or withdrawn.

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 5, 1992.

TRD-9210725 Susan Cory
General Counsel
Workers' Compensation
Commission

Earliest possible date of adoption: September 14, 1992

For further information, please call: (512) 440-3592



TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 134. Medical Benefits—Guidelines for Medical Services, Charges, and Payments

Subchapter A. Medical Policies

• 28 TAC §134.6

The Texas Workers' Compensation Commission proposes an amendment to §134.6, concerning travel expenses. These changes specify the appeal process to follow when a dispute arises regarding the expense of travel for medical care.

Drew Thigpen, associate director, financial management, has determined that for the first five-year period the section is in effect there should be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Thigpen 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 this section will be possible savings to injured employees who will not be required to travel to Austin, Travis County to resolve disputes regarding the expenses involved in travel related to medical care. There will be no economic cost to persons required to comply with this section.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The amendment is proposed under Texas Civil Statutes, Article 8308-2.09(a) which authorize the commission to adopt rules necessary to administer the Act and Texas Civil Statutes, Article 8308-8.21(b)(3), which require the commission develop a program for resolving disputes regarding health care treatments and services.

§134.6. Travel Expenses.

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

(e) Disputes relating to the expense of travel for medical care shall be resolved through benefit review conferences, benefit contested case hearings, appeals to the appeals panel, and arbitration.

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 5, 1992.

TRD-9210720 Susan Cory
General Counsel
Workers' Compensation
Commission

Earliest possible date of adoption: September 14, 1992

For further information, please call: (512) 440-3592

Subchapter I. Provider Billing Procedures

• 28 TAC §134.802

The Texas Workers' Compensation Commission proposes an amendment to §134.802, concerning insurance carrier's submission of medical bills to the commission. These changes exclude pharmacy bills from those the carrier is required to submit, require carriers to submit information electronically, provide more specific guidance on health care provider identifying information that must be submitted, and matches what the carrier must submit to the commission to what the provider must submit to the carrier.

Drew Thigpen, associate director, financial management, has determined that for the first five-year period the section is in effect the only fiscal implication for state or local government or small businesses as a result of enforcing or administering this section is a potential savings for the commission based on reduced data entry of bills. Assuming that the data entry costs over the five-year period would be approximately \$750,000 per year and that the savings that could be realized would be 75% of that amount, this would suggest a cost savings to the commission of \$2,812,500 over the next five years.

Mr. Thigpen 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 possible savings to carriers who no longer need to submit pharmacy bills to the commission. Persons required to comply who are not currently submitting information electronically will incur economic costs to purchase equipment and program it to provide the information in the form and format prescribed by the commission.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The amendment is proposed under Texas Civil Statutes, Article 8308-2.09(a) which authorize the commission to adopt rules necessary to administer the Act and Texas Civil Statutes, Article 8308-8.21(b)(4)-(7), which require the commission to adopt rules related to monitoring fees charged, to detect patterns or practices of unreasonable denial of fees, and to increase the intensity of review for a health care provider who charges amounts inconsistent with the fee guidelines developed by the commission.

§134.802. Insurance Carrier's Submission of Medical Bills to the Commission.

(a) Within 15 days after final payment of an original bill from a health care

provider, or reimbursement to any person who has paid a health care provider's bill, insurance carriers shall, except for the Statement of Pharmacy Services, Forms TWCC-66a and TWCC-66c, submit a copy of the bill with the information described in subsections (c) and (d) of this section to the commission in Austin. [Upon written approval by the commission, the insurance carrier may submit the information described in this rule electronically, in a form and format prescribed by the commission.]

(b) Effective January 1, 1993, each insurance carrier shall submit the information described in this rule electronically, in the form and format prescribed by the commission [If the carrier is unable to submit the required information described in this rule electronically, paper copies of the original bill shall be submitted to the commission].

(c) The insurance carrier shall submit the following information from each original bill received from a health care provider:

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

(6) the health care provider's name, address; [professional license number and federal tax identification number];

(7) professional license number except hospitals and ambulatory surgical centers;

(8) for hospitals and ambulatory surgical centers either their medicare number or an identification number assigned by the commission;

(9)[(7)] date of billing; and

(10)[(8)] date the bill was received by the insurance carrier.

(d) In addition to the information in subsection (c) of this section, the insurance carrier shall include the following information for each service, treatment, or medication charged by the provider:

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

(3) specific diagnosis(-es) [with] by appropriate ICD-9-CM code(s);

(4) procedure code according to the fee guidelines established by the commission [or, if a medication, the national drug code];

(5) (No change.)

[(6) type of service;]

(6)[(7)] the charge;

(7)[(8)] the date of reimbursement;

(8)[(9)] amount paid; and

(9)[(10)] exception code, if not paid in full.

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 5, 1992.

TRD-9210721

Susan Cory
General Counsel
Workers' Compensation
Commission

Earliest possible date of adoption: September 14, 1992

For further information, please call: (512) 440-3592

Chapter 164. Extra-Hazardous Employer Program

• 28 TAC §§164.1, 164.3, 164.4, 164.7, 164.8

The Texas Workers' Compensation Commission proposes amendments to §164.1, §164.3, §164.4, §164.7, and §164.8, concerning the extra-hazardous employer program. These changes simplify the method used to identify employers as extra-hazardous, allows employer-specific data to be used rather than aggregate data, and may allow use of accident prevention plans which an employer independently developed prior to being identified as extra-hazardous.

Drew Thigpen, associate director, financial management, has determined that for the first five-year period the sections are in effect there should be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Thigpen 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 sections will be possible savings to employers identified as extra-hazardous. These savings would result from the opportunity to avoid developing a new accident prevention plan if the employer had already developed one in the last six months and could be as much as \$1,500-3,000. There will be no effect on small businesses.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The amendments are proposed under Texas Civil Statutes, Article 8308-2.09(a), which authorize the commission to adopt rules necessary to administer the Act and Texas Civil Statutes, Article 8308-7.04, which require the commission to identify extra-hazardous employers and oversee the development and implementation of accident prevention programs.

§164.1. Criteria for Identifying Extra-Hazardous Employers.

(a) The Texas Workers' Compensation Commission (the commission) shall identify employers subject to the Texas

Workers' Compensation Act, §7.01, as extra-hazardous based on criteria established by the commission in this chapter. Each employer identified, continued, or monitored shall have the right to administrative review of the findings of the commission by the director of the division of workers' health and safety. In addition, each employer identified, continued, or monitored shall have the right to request a hearing to contest the findings of the commission. [An employer, who is subject to this chapter under the Texas Workers' Compensation Act, §7.01, shall be identified as an extra-hazardous employer using the Poisson probability distribution. The information required to compute the distribution is as follows:

[(1) the employer's workforce;

(2) the industry workforce;

(3) the employer's injuries as identified in subsection (e) of this section; and

[(4) the industry's injuries as identified in subsection (e) of this section.]

(b) The following calculation shall be used to determine extra-hazardous status: an individual employer's rate of injuries per 100 employees within its business or industry is divided by the expected injury rate for that business or industry established by the Bureau of Labor Statistics (BLS) or other suitable sources approved by the commissioners. The resultant number is compared to the threshold level established by the division which will adjust for employer size and fatalities. [The most recent available employer and industry workforce data at the four-digit standard industrial classification (SIC) code level will be obtained from the Texas Employment Commission.]

(c) as used in the calculation injuries include:

(1) injuries (excluding occupational diseases and fatalities) which result in eight or more days of lost time;

(2) occupational diseases;

(3) fatalities;

(4) after publication pursuant to subsection (f) of this section, injuries (excluding occupational diseases and fatalities) resulting in more than one, but less than eight days' lost time; and

(5) after publication pursuant to subsection (f) of this section, medical only, no lost time injuries with impairment (excluding occupational diseases). [If an employer is a member of a four-digit SIC code industry of less than 20 companies, all companies within the industry group (three-digit SIC code) will be included to increase the population of compa-

nies to 20 or above. The major group (two-digit SIC code) will be used, if necessary, to achieve the minimum 20-company population. If necessary, major groups will be combined using the most closely related industries, as determined by the division, to achieve the minimum 20-company population.]

(d) **Fatalities, as used in the calculation shall be given a weight greater than non-fatal injuries.** [Extra-hazardous employers will be identified at least quarterly. Injury data, beginning January 1, 1991, will be included until 12 months of data are available. Thereafter, only the most recent 12 months of data will be included. The commission may elect to use 1990 injury data to provide 12 months of injury data until January 1992.]

(e) **The threshold level, as used in the calculation, shall be established so as to insure that an identified employer's injury frequencies substantially exceed those that may reasonably be expected in the employer's business or industry.** [The following injuries will be sequenced into the Poisson probability distribution calculation for use by the division of health and safety to identify extra-hazardous employer:

(1) injuries resulting in fatalities;

(2) occupational diseases (excluding fatalities);

(3) injuries (excluding occupational diseases and fatalities) resulting in eight or more days lost time;

(4) injuries (excluding occupational diseases and fatalities) resulting in more than one, but less than eight days lost time;

(5) medical only, no lost time injuries with impairment (excluding occupational diseases); and

(6) propose a study by the division of health and safety to determine the cost to the commission and the employers of capturing medical only's no lost time incidents. This study will commence July 1, 1992, and be completed by December 31, 1992. The results of the study would be placed on the commission agenda for a review and evaluation no later than March 31, 1993. The cost of obtaining the information and administering this phase of the procedure will be included in determining if it is feasible for identifying extra-hazardous employers.]

(f) **Upon approval of the commissioners and at least 30 days prior to using the following criteria to initially identify extra-hazardous employers, the division will publish values for these criteria in the *Texas Register*.** At least 30 days prior to identifying extra-hazardous employers

based on a changed value in one of the following criteria, the division will publish the changed value in the *Texas Register*.

(1) the threshold;

(2) the weight factor to be applied to fatalities;

(3) the date after which each of the expanded injury definitions, described in subsection (c) of this section, will be used; and

(4) the source of expected injury rate information.

[(f) The phased sequence of injury categories, in subsection (e) of this section, used for identifying extra-hazardous employers will be the following.

(1) The first identification of extra-hazardous employers will include injuries from subsection (e)(1)-(3) of this section.

(2) The second identification of extra-hazardous employers will include injuries from subsection (e)(1)-(4) of this section. Subsection (e)(4) data, when added, will include injuries accumulated from January 1, 1991.

(3) The third identification of extra-hazardous employers will include injuries from subsection (e)(1)-(5) of this section. Subsection (e)(5) data, when added, will include injuries accumulated from January 1, 1991.

[(g) The thresholds used in the Poisson distribution calculations will be phased in based on the following schedule.

(1) The first identification calculation will use a threshold of .00000001 for a company with injuries, none of which were fatalities, and a threshold of .01 will be used for a company with one or more fatalities.

(2) The second and subsequent identification calculations will use a threshold of .000001 for a company with injuries, none of which were fatalities, and a threshold of .01 will be used for a company with one or more fatalities.

[(h) To be declared extra-hazardous, the record of the company being considered must be such that:

(1) in the initial calculation for a company with zero fatal injuries, another company of the same size in the same industry would have a probability of greater than 999,999,999 in 1,000,000,000 (.000000001 threshold) of having a better injury record. For a company with at least one fatality, another company of the same size in the same industry would have a probability of greater than 99 in 100 (.01 threshold) of having a better injury record; and

(2) in the second and subsequent calculations for a company with zero fatal injuries, another company of the same size in the same industry would have a probability of 999,999 in 1,000,000 (.000001 threshold) of having a better injury record. For a company with at least one fatality, another company of the same size in the same industry would have a probability of greater than 99 in 100 (.01 threshold) of having a better injury record.

[(i) The commission will review the injury sequence in subsection (f) of this section and the thresholds in subsection (g) of this section quarterly for effectiveness and may adjust the injury categories and thresholds for the subsequent calculations.

[(j) The division will publish the following:

(1) TWCC-112, extra-hazardous employer projection worksheet, that may be used by an employer to compute a company's expected injuries, "L";

(2) TWCC-113, TWCC standard industrial classification (SIC) code information for computing extra-hazardous employer projections, a look-up table that provides industry-wide employment and injury data by four-digit SIC code, for use with the TWCC-112 worksheet;

(3) TWCC-114, look-up table for extra-hazardous employer projections, that will allow an employer to determine if the employer has attained the critical level of injuries for identification as an extra-hazardous employer. A separate TWCC-114 will be published for each Poisson distribution threshold.]

§164.3. Safety Consultation.

(a) **Employers who have not had an accident prevention plan developed and implemented in the last six months prior to notification shall, not [Not] later than 30 days following receipt of notice of identification as an extra-hazardous employer, [the employer shall] complete a safety consultation from a division preapproved professional source.** The source may be provided by:

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

(b) **Employers who have had an accident prevention plan developed within the six months prior to notification as an extra hazardous employer must obtain division review of the plan for adequacy, to include an on-site visit.**

(c)[(b)] Upon request, the division shall provide a list of approved professional sources.

(d)[(c)] The safety consultant shall conduct a hazard survey at each appropriate job site and prepare a hazard survey report.

The report shall be in writing in the format prescribed by the commission and shall include a description of any hazardous conditions or practices identified, along with recommendations for controlling the identified hazardous conditions or practices.

(e)[(d)] The hazard survey report(s) and any attachments shall be filed by the consultant with the division within 24 hours of completing the consultation.

(f)[(e)] If the initial consultation and report cannot be completed in the time allowed under this section, the employer may apply to the commission for a waiver of the time requirements. In no case shall the initial consultation exceed 60 days following the date of notification.

(g)[(f)] The consultants identified in subsection (a) of this section may charge the employer for consultations provided under the extra-hazardous employer program.

§164.4. Formulation of Accident Prevention Plan.

(a) **Employers who have not had an accident prevention plan developed in the last six months prior to notification will, within [Within] 30 days of the date of the consultant's initial report, develop with the assistance of a consultant an accident prevention plan which is consistent with established federal and state codes and standards, or in the absence of such standards, with accepted industry practices if recognized hazards exist that are causing or are likely to cause death or serious physical harm to employees, and that addresses each hazard and/or unsafe practice identified in the report. The accident prevention plan shall be developed by an approved professional source as defined in §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations), shall be in the format prescribed by the commission, and shall include:**

(1)-(7) (No change.)

(b) **Employers who have had an accident prevention plan developed and implemented within the six months prior to notification as an extra-hazardous employer that has been verified and approved by the division pursuant to §164.3(g) of this title (relating to Safety Consultation) will continue implementation of the plan and obtain an inspection by the division as provided in §164.5 of this title (relating to Follow-up Inspection by the Division).**

(c)[(b)] Reference material for the development of an accident prevention plan may be obtained from the division.

(d)[(c)] An implementation time line, not to exceed six months after the formulation of the plan, shall be developed and included with the plan.

(e)[(d)] If the employer disagrees with any or all of the plan, the employer shall sign the plan and attach a statement containing the specific reasons for disagreement to the plan. The division will review the areas of disagreement and notify the employer and the consultant of the decision on each area of disagreement. If the employer disagrees with the decision rendered by the division, the employer may request a hearing as provided by Chapter 145 of this title (relating to Dispute Resolution-Hearings Under the Administrative Procedure and Texas Register Act).

(f)[(e)] The employer's signature is understood to exclude those areas of the plan for which a disagreement has been attached to the plan, pending review by the division or a formal appeal.

(g)[(f)] If the division finds it is practical to do so, the division may direct the employer to begin implementation of any or all parts of the plan that are not subject to the employer's disagreement. The timeliness specified in the plan shall remain in effect for those parts of the plan the employer is directed to implement.

(h)[(g)] The employer shall be responsible for filing the accident prevention plan with the division no later than 30 days after completion of the safety consultation and no later than 90 days after the employer received notification of identification as an extra-hazardous employer. Delays requested for good cause will be reviewed by the division.

§164.7. Removal From Extra-Hazardous Employer Status.

(a) An employer shall be removed [certified for removal] from extra-hazardous employer status [by the division] if on inspection the division determines that the employer has complied with the terms of the accident prevention plan or implemented other acceptable corrective measures approved by the division.

(b) If the employer has complied with the accident prevention plan but continues to exceed the injury frequency that may reasonably be expected in that employer's business or industry, the employer will be removed from extra-hazardous employer status and placed in a monitoring status. For purposes of placing an employer in monitor status, "reasonably expected" is defined as: the BLS rate or other suitable standard approved by the commissioners and used in the calculation. ["the employer's expected injuries, 'L', as used in the Poisson probability distribution calculation, for extra-hazardous employers." Refer to §164.1 of this title (relating to Criteria for Identifying Extra-Hazardous Employers) for "extra-hazardous employer identification.]

Determining placement on monitor status will be based on injury data from the most recent 12 months period for which data is available.

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

§164.8. Continuation of Extra-Hazardous Employer Status.

(a) (No change.)

(b) [If the employer has complied with the accident prevention plan but continues to substantially exceed the injury frequency that may be expected in that employer's business or industry, the employer will be continued on extra-hazardous employer status. For purposes of continuing an employer on extra-hazardous employer status, substantially exceeds is defined as: "the employer's critical injuries, 'C', as used in the Poisson probability distribution calculation, for extra-hazardous employers". Refer to §164.1 of this title (relating to Criteria for Identifying Extra-Hazardous Employers). Determining continuation on extra-hazardous employer status will be based on injury data from the most recent 12 months period for which data is available.

[(c)] If an employer is not certified for removal from extra-hazardous employer status after the follow-up inspection, the employer shall take the actions specified in the follow-up inspection report, or other suitable hazard abatement measures as approved by the division, as a condition of removal from extra-hazardous employer status.

(c)[(d)] An employer shall file a progress report with the division every 60 days until the employer has been removed from extra-hazardous employer status. The report shall include:

(1) For subsection (a) of this section only, the list of areas of the accident prevention plan which were identified as not being fully implemented at the time of the follow-up inspection;

(2) additional areas identified in the follow-up inspection report; and

(3) the steps which are being taken to address them.

(d)[(e)] After the required corrective actions have been taken, the employer shall notify the division and request a reinspection. The request for reinspection shall be made no later than six months after the date of the follow-up inspection.

(e)[(f)] The division shall reinspect the employer as soon as practical and no later than 30 days after receiving a request to reinspect.

[(g)] An employer may request a hearing to contest the finding of continua-

tion on extra-hazardous employer status as provided by Chapter 145 of this title (relating to Dispute Resolution-Hearings Under the Administrative Procedure and Texas Register Act).]

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 5, 1992

TRD-9210722

Susan Cory
General Counsel
Workers' Compensation
Commission

Earliest possible date of adoption: September 14, 1992

For further information, please call: (512) 440-3592

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 292. River Authorities

Subchapter A. General Provisions

The Texas Water Commission proposes new §§292.1-292.3, and 292.11-292.13, concerning general provisions, and administrative policies for water districts and river authorities. This chapter is proposed under the Texas Water Code, §§5.013, 5.103, 5.105, and 12.081. These new rules are proposed in order to provide guidelines for supervision of certain districts and river authorities.

Subchapter A of this chapter (relating to General Provisions) is composed of §§292.1-292.3. Section 292.1 (relating to Objective and Scope of Rules) delineates the objective and scope of the rules. Section 292.2 (relating to Meaning of Certain Words) defines terms and phrases to be used in the rules. Section 292.3 (relating to Texas Water Commission Report to the Legislature) dictates that the executive director is to submit a report of findings made during the supervision of districts and authorities to the governor, lieutenant governor, and speaker of the house. This section also describes the contents of the report.

Subchapter B of this chapter (relating to Administrative Policies) is composed of §§292.11-292.13. Section 292.11 (relating to Administrative Policies to be Adopted by the Board) states that the provisions set forth in §292.13 (relating to Minimum Provisions) are to be considered the minimum standards by which the conduct of the board of a district or an authority is to be measured. Section 292.12 (relating to the Right of Executive Director to Review Policies and Other Documents) provides a basis for the executive director to determine if administrative policies comply with these rules and documents com-

ply with the administrative policies. Section 292.13 (relating to Minimum Provisions) dictates that the certain provisions are to be incorporated into the administrative policies adopted by the districts and authorities that are subject to this chapter. The provisions in this section include a code of ethics for river authority or district officials and employees, a travel expenditures policy, an investment policy for the funds of river authorities or districts, a policy for the selection of professional services, and a management policy.

Norma Nance, director, Budget, Planning and Evaluation Division, has determined that for the first five-year period the sections are in effect there will be direct fiscal implication as a result of enforcement or administration of the sections. The costs to state government are negligible and are not expected to exceed \$1,000 annually. There are no effects on revenues. Costs to local governments are expected to increase by approximately \$300,000 for each fiscal year of the period 1992-1996. The costs to be incurred by river authorities are related to maintenance of lists of firms to be pre-qualified for professional services (\$30,000) and solicitation and review of proposals for projects in excess of \$25,000 (\$150,000) periodic independent management audits (\$120,000).

Ms. Nance 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 enforcement of or compliance with these sections will be improvements in the internal controls and management of districts and river authorities and the funds supporting operations of these units of local government consistent with the controls applicable to units of state government. There will be no effect on small businesses. There are no additional costs to persons related to compliance with the provision of these sections as proposed.

Comments on the proposal may be submitted to Irene Montelongo, Senior Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m., 30 days after the date of publication. For further information please call (512) 463-8069.

• 31 TAC §§292.1-292.3

The new sections are proposed under the Texas Water Code, §§5.013, 5.103, 5.105, and 12.081, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policies of the commission, and to issue rules necessary to supervise districts and authorities.

§292.1. Objective and Scope of Rules.

(a) The Texas Water Commission has the continuing right of supervision of districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution. This chapter shall govern the administrative policies of the following districts:

- (1) Angelina & Neches River Authority;
- (2) Brazos River Authority;
- (3) Canadian River Municipal Water Authority;
- (4) Colorado River Municipal Water District;
- (5) Guadalupe-Blanco River Authority;
- (6) Lavaca-Navidad River Authority;
- (7) Lower Colorado River Authority;
- (8) Lower Neches Valley Authority;
- (9) North Texas Municipal Water District;
- (10) Northeast Texas Municipal Water District;
- (11) Nueces River Authority;
- (12) Red River Authority;
- (13) Sabine River Authority;
- (14) San Antonio River Authority;
- (15) San Jacinto River Authority;
- (16) Tarrant County Water Control and Improvement District Number 1;
- (17) Titus County Fresh Water Supply District Number 1;
- (18) Trinity River Authority;
- (19) Upper Neches River Municipal Water Authority;
- (20) West Central Texas Municipal Water District.

(b) Nothing in this chapter shall be construed to relieve a district of its legal duties, obligations, or liabilities relative to its responsibilities as defined in its enabling legislation or in the Texas Water Code.

§292.2. *Meaning of Certain Words.* Unless the context requires otherwise, the following terms and phrases shall mean the following.

(1) Authority shall be used interchangeably with the term "District" to connote any entity created by Article III, Section 52 or Article XVI, Section 59, of the Texas Constitution and which are subject to these rules.

(2) Board means the governing body of the district.

(3) Commission means the Texas Water Commission.

(4) Executive director means the executive director of the Texas Water Commission.

§292.3. *Texas Water Commission Report to the Legislature.* Pursuant to the Texas Water Code, §12.081(b), the executive director shall prepare by December 1 of each even-numbered year, a report of findings made in the supervision of districts and authorities. The report shall be submitted to the governor, lieutenant governor, and speaker of the house and may include a summary of supervision activities by the commission, a description of actions taken by certain districts in response to lieutenant governor, and speaker of the house and may include a summary of supervision activities by the commission, a description of actions taken by certain districts in response to these rules, and other findings made in the supervision of districts.

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 7, 1992.

TRD-9210834 Mary Ruth Holder
Director Legal Division
Texas Water Commission

Earliest possible date of adoption: September 14, 1992

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

◆ ◆ ◆
Subchapter B. Administrative Policies

• **31 TAC §§292.11-292.13**

The new sections are proposed under the Texas Water Code, §§5.103, 5.105 and 12.081, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to issue rules necessary to supervise districts and authorities.

§292.11. Administrative Policies to be Adopted by the Board.

(a) All districts must adopt certain administrative policies in compliance with the Texas Water Code, §50.381 and §50.3811. The administrative policies shall incorporate the legal provisions as set forth in §292.13 of this title (relating to Minimum Provisions). The provisions set forth in §292.13 of this title are considered to be the minimum standards by which the conduct and activities of the boards are governed.

(b) These rules do not preclude any district from adopting policies which ad-

dress other administrative matters or which are more specific as to the interpretation and implementation of the legal provisions referenced in §292.12 of this title (relating to Right of Executive Director to Review Policies and Other Documents).

§292.12. Right of Executive Director to Review Policies and Other Documents.

(a) Each authority subject to these rules shall submit to the executive director a copy of its administrative policies and any subsequent amendments as adopted by the governing board.

(b) The executive director shall file the copies of the administrative policies and shall make them available for public inspections.

(c) The executive director may request additional documents from the district or inspect records at the office of the district to determine compliance with the adopted administrative policies.

§292.13. Minimum Provisions. The following provisions shall be incorporated into the administrative policies adopted by the authorities subject to these rules.

(1) Code of ethics. The administrative policies shall mandate compliance with the following standards:

(A) the Local Government Code, Chapter 171, relating to conflicts of interests with a business entity in which the official has a substantial interest;

(B) Texas Civil Statutes, Article 5996a, relating to nepotism;

(C) Texas Civil Statutes, Article 6252-9b, relating to standards of conduct and financial disclosure;

(D) Article III, Section 52, of the Texas Constitution, relating to the prohibition on granting public money or things of value to any individual, association, or corporation.

(2) Travel expenditures. The administrative policies shall provide for reimbursing district officials for necessary and reasonable travel expenditures incurred while conducting business or performing official duties or assignments. The board may adopt additional policies which further define the criteria for necessary and reasonable travel expenditures and which provide procedures for the reimbursement of expenses.

(3) Investments. The administrative policies shall provide for compliance with the following statutes:

(A) Texas Civil Statutes, Article 842a-2 (the Public Funds Investment Act of 1987);

(B) Texas Civil Statutes, Article 2529(d) (the Public Funds Collateral Act); and

(C) any other appropriate statutes which are applicable to the investment of the authority's funds.

(4) Professional services policy. The administrative policies shall provide for compliance with the following standards:

(A) Texas Civil Statutes, Article 664-4 (the Professional Services Procurement Act) which prohibits the selection of professional services based on competitive bids;

(B) a list maintained of at least three qualified persons or firms for each area of professional service used by the authority. The pre-qualified persons or firms shall be sent a request for proposal for any contract award for a new project which is expected to exceed \$25,000.

(5) Industrial development bonds and pollution control bonds. The administrative policies shall reference any industrial development corporation associated with the authority and shall provide for compliance with the memorandum issued by the state auditor on October 7, 1988, relating to the disclosure of industrial development and pollution control bonds.

(6) Management policies. The administrative policies shall provide for the following:

(A) an independent management audit to be conducted every five years and submitted to the Texas Water Commission. As an alternative, an internal audit office may be established which reports to the board of directors;

(B) compliance with the provisions and intent of §106, Contracting With Historically Underutilized Businesses of Texas, Article V, General Provisions of Texas House Bill 1, 72nd Legislature, First Called Session (1991) relative to contracting with underutilized businesses and providing equal employment opportunities.

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 7, 1992.

Earliest possible date of adoption: September 14, 1992

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Home and Community-Based Services

• 40 TAC §§48.2209-48.2215

The Texas Department of Human Services (DHS) proposes new §§48. 2209-48.2215 concerning corrective action and provider sanction; hazards to health, safety, and welfare; Level I action; Level II action; Level III action; unannounced or intermittent review visits; and discretionary certification sanctions in its Community Care for Aged and Disabled chapter. The purpose of the new sections is to add the guidelines that the Texas Department of Mental Health and Mental Retardation (TXMHMR) may use to determine provider sanctions and onsite follow-up review visits.

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

Mr. Raiford 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 increased compliance with the provider survey and certification standards as a result of notifying providers of the specific guidelines that TXMHMR will use. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Jose Gerardo Cantu at (512) 450-3693 in DHS's Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-153, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.2209. *Corrective Action and Provider Sanction.* The guidelines specified in §§48.2210-48.2215 of this title (relating to Hazards to Health, Safety, and Welfare; Level I Action; Level II Action; Level III Action; Unannounced or Intermittent Review Visits; and Discretionary Certification Sanctions) are used by the Texas Department of Mental Health and Mental Retardation (TXMHMR) Home and Community-Based Services (HCS) program review teams and the TXMHMR HCS program coordination office to determine the need for provider sanctions and/or provider onsite follow-up review visits that occur before those required concurrently with the recertification review. Current certification review corrective action plans required from the provider and related timelines that are referenced in the Provider Survey and Certification Standards remain in effect, if applicable.

§48.2210. *Hazards to Health, Safety and Welfare.* Hazards to health, safety, and welfare are any conditions that the review team determines will result in life-threatening harm, permanent injury, or death of the individual within 48 hours. These items are designated as such in the Home and Community-Based Services certification review report. If the items are corrected during the review visit, the corrections will also be designated in the report.

(1) Immediate Corrective Action. Findings determined to be hazards to health, safety, and welfare must be corrected before the exit conference of the respective review visit.

(2) Sanction. If the provider does not correct the hazards to health, safety, and welfare:

(A) the provider must not be certified, continue certification, or be recertified; and

(B) the Texas Department of Mental Health and Mental Retardation (TXMHMR) coordinates development of alternative services for people enrolled in the provider's program, as appropriate.

§48.2211. *Level I Action.*

(a) Determination. Level I action results if:

(1) 12 or more items of non-compliance from the sections of the Consumer Principles for Evidentiary Certification listed below remain uncorrected at the time of the certification review exit conference:

(A) Service Delivery (Section C);

(B) Interdisciplinary Team Operations (Section D);

(C) Personnel Operations (Section F);

(D) Quality Assurance (Section G); or

(2) more than seven of the remaining uncorrected principles are the same principles which were cited and corrected during the previous review visit. These uncorrected principles are called "Repeat Items."

(b) Corrective action. The provider must complete corrective action within 30 calendar days from the date of the exit conference. The Texas Department of Mental Health and Mental Retardation (TXMHMR) must complete an on-site follow-up review within 15 calendar days following the 30th day.

(c) Vendor hold. If the provider does not correct all remaining items of non-compliance during the first follow-up visit, vendor hold is implemented. The vendor hold is effective for up to 60 calendar days.

(1) The Home and Community-Based Services (HCS) program coordination office recommends to the Texas Department of Human Services (DHS) that provider reimbursement be suspended until corrective actions are completed.

(2) TXMHMR completes a second follow-up review visit between 30 and 45 calendar days from the date the vendor hold was implemented.

(3) If the provider corrects all items of noncompliance during the second follow-up visit, the vendor hold is removed effective the date of the exit conference of the visit.

(d) Denial of certification. Denial of certification results if the provider does not fully correct all items of noncompliance within 60 calendar days of the establishment of vendor hold, as determined by the second follow-up visit by TXMHMR. The HCS program coordination office does not certify the provider and recommends to DHS that contract cancellation action be initiated.

§48.2212. *Level II Action.*

(a) Determination. Level II action results if:

(1) eight, nine, 10 or 11 items of noncompliance from the sections of the Consumer Principles for Evidentiary Certi-

fication listed below remain uncorrected at the time of the exit conference:

(A) Service Delivery (Section C);

(B) Interdisciplinary Team Operations (Section D);

(C) Personnel Operations (Section F);

(D) Quality Assurance (Section G); or

(2) four, five, six, or seven of the remaining uncorrected principles are the same principles which were cited and corrected during the previous review visit. These uncorrected principles are called "Repeat Items."

(b) Corrective action. The provider must complete corrective action within 45 calendar days from the date of the exit conference. The Texas Department of Mental Health and Mental Retardation (TXMHMR) must conduct an on-site follow-up review within 15 calendar days following the 45th day.

(c) Second Follow-up Visit. TXMHMR conducts a second follow-up visit if items of noncompliance remain uncorrected after completion of the first follow-up visit.

(1) The provider must complete corrective action for the remaining items of noncompliance within 30 calendar days from the date of the exit conference of the first follow-up.

(2) TXMHMR must complete the second follow-up visit within 15 calendar days following the 30th day.

(d) Vendor hold. If the provider does not correct all remaining items of noncompliance during the second follow-up visit, vendor hold is implemented. The vendor hold is effective for up to 60 calendar days.

(1) The Home and Community-Based Services (HCS) program coordination office recommends to the Texas Department of Human Services (DHS) that provider reimbursement be suspended until corrective actions are completed.

(2) TXMHMR completes a third follow-up review visit between 30 and 45 calendar days from the date the vendor hold was implemented.

(3) If the provider corrects all items of noncompliance during the third follow-up visit, the vendor hold is removed effective the date of the exit conference of the visit.

(e) Denial of certification. Denial of certification results if the provider does not fully correct all items of noncompliance within 60 calendar days of the establishment of vendor hold, as determined by the third follow-up visit by TXMHMR. The HCS program coordination office does not certify the provider and recommends to DHS that contract cancellation action be initiated.

§48.2213. *Level III Action.*

(a) Determination. Level III action results if more than 12 items of noncompliance from the sections of the Consumer Principles for Evidentiary Certification listed below remain uncorrected at the time of the exit conference:

(1) Mission, Development and Philosophy of Program Operations (Section A);

(2) Consumer Rights (Section B); or

(3) Denials and Service Terminations (Section E).

(b) Corrective action with technical assistance.

(1) The provider must complete corrective action within 60 calendar days from the date of the exit conference.

(2) Formal technical assistance to correct items of noncompliance may be:

(A) given by the Home and Community-Based Services program coordination office during the visit; or

(B) scheduled by the Texas Department of Mental Health and Mental Retardation within 90 days from the date of the exit conference.

§48.2214. *Unannounced or Intermittent Review Visits.*

(a) Determination.

(1) Unannounced or intermittent review visits may occur at any time, with or without prior notice to the provider, at the discretion of the Home and Community-Based Services (HCS) program coordination office.

(2) Unannounced or intermittent review visits must have the prior approval of the Texas Department of Mental Health Mental Retardation HCS deputy director for provider services.

(3) Before leaving an on-site certification visit, the HCS review team must ensure that no items of noncompliance remain that suggest:

(A) except for appealing, the HCS provider is unwilling to comply with the findings;

(B) there is likelihood that a hazard will occur at a later date, as the result of the remaining items of noncompliance; or

(C) pervasive patterns of noncompliance exist that indicate a hazard may occur before the next scheduled or indicated follow-up visit, as a direct result of the remaining items of noncompliance.

(i) Pervasiveness is not a prime factor in determining whether a hazardous condition exists because noncompliance can be isolated or widespread.

(ii) Pervasiveness can indicate how difficult the noncompliance items can be for the HCS provider to correct and if an intermittent or unannounced review (on-site or desk review) is needed before the scheduled and/or indicated follow-up visits.

(b) Corrective action and sanctions. Corrective actions and sanctions imposed as a result of unannounced or intermittent review visits may include any of those listed in §§48.2210, 48.2211, 48.2212, and 48.2213 of this title (relating to Hazards to Health, Safety, and Welfare; Level I Action; Level II Action; and Level III Action).

§48.2215. *Discretionary Certification Sanctions.*

(a) Sanctions specified in §§48.2209, 48.2210, 48.2211, 48.2212, 48.2213, and 48.2214 of this title (relating to Corrective Action and Provider Sanction; Hazards to Health, Safety, and Welfare; Level I Action; Level II Action; Level III Action; and Unannounced or Intermittent Review Visits) may be applied on a discretionary basis if the uncorrected items of noncompliance cited during a review visit are of such substantial magnitude or pervasive extent to warrant actions that do not fall under the sections listed in this section.

(b) Discretionary certification sanctions require consultation with, and prior approval of, the Home and Community-Based Services deputy director for provider services.

(c) Discretionary certification sanctions may consist of any actions specified in §§48.2209, 48.2210, 48.2211, 48.2212, 48.2213, and 48.2214 of this title (relating to Corrective Action and Provider Sanction; Hazards to Health, Safety, and Welfare; Level I Action; Level II Action; Level III Action; and Unannounced or Intermittent Review Visits).

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 7, 1992.

TRD-9210817

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: October 15, 1992

For further information, please call: (512)
450-3765

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 11. Design Division

Private Toll Roads

• 43 TAC §§11.100-11.107

The Texas Department of Transportation proposes new §§11.100-11.107, concerning the policies, procedures, and conditions under which a private entity or corporation may obtain the approval of the Texas Transportation Commission and the department to construct, operate, and maintain a private toll facility.

Texas Civil Statutes, Article 6674v.1a prohibit a private entity or corporation from constructing any privately owned toll project which connects to a road, bridge, or highway included in the state highway system unless approved by the commission and the department, and requires the commission to adopt procedural and substantive rules and regulations for the approval of construction of such a toll project. In addition, Article 6674v.1a requires such rules to include consideration of the integration of the project into the state highway system embodied in regional transportation plans, the potential impact of the project on local economies, and the potential impact of the project on the free flow of trade with Mexico.

The commission has determined that since the relevant private toll projects will be open to the public and interconnected with the state highway system, thereby providing for continuous public travel, the rules should protect the health and safety of the traveling public, protect the environment, and provide for public involvement by ensuring that private toll projects will be designed and constructed to department standards, will have no significant adverse impact on the environment, will produce revenue sufficient to finance the construction, maintenance, operation, design, and planning of the project, will include all interested parties in the planning and decision making phases, and will be operated after construction in a safe manner.

Section 11.100, purpose, describes the statutory role and authority of the Texas Transportation Commission and the Texas Department of Transportation in approving a

private toll project constructed by a private entity or corporation Section 11.101, definitions, defines words and terms used in these sections. Section 11.102, preliminary studies, outlines the requirements and procedures for an applicant to perform a feasibility study and a study of the social and environmental impact of the project and to allow public involvement prior to submitting an application to the department for a project. Section 11.103, application, explains the steps an applicant must follow in filing an application, including the preliminary studies, public involvement, project analysis of impact on local economies and international trade, project design schematic, preliminary design, and providing construction plans certified by a registered professional engineer. Section 11.104, project requirements, requires that a design field change must comply with department design standards; and if related to the state highway connection, must be approved by the department; requires compliance with applicable state and federal laws and regulations; directs that speed limits must be established in the same manner utilized by the department, requires the applicant to submit prescribed required data for federal approval of access to a federal-aid highway; and provides that all work within state owned right-of-way will be subject to written agreement with the department at the sole expense of the applicant. Section 11.105, hearing, prescribes procedures for conduct and participation at a public hearing held by the department concerning a proposed private toll project. Section 11.106, commission action, describes the procedures of the Texas Transportation Commission when approving the construction of a private toll project and provides for approval to be by written order of the commission. The section further specifies the findings necessary for commission approval, including compatibility with transportation plans, the environment, local and regional economies, and trade with Mexico. Section 11.107, compliance, provides that a private toll project may not be connected to the state highway system if the private entity fails to meet commission requirements for approval, and further that failure to meet any requirement for operating and maintaining the project will cause the department to sever any connection with the state highway system.

William A. Lancaster, P.E., director, division of highway design, has determined that there will be fiscal implications as a result of enforcing or administering the section. While there are currently nine chartered corporations for the purpose of constructing private toll roads, the department is not able to predict the scope of, or timing of these various projects. However, a typical proposed toll project would include the plan review, public hearing, and permitting processes, which would impact the fiscal resources of the department. The effect on state government for a typical project will be an estimated additional cost of approximately \$24,000. The effect on local government for a typical project will be negligible.

Mr. Lancaster has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section. It is noted that one

of the findings essential to commission approval of a project is that it not adversely affect local economies.

Mr. Lancaster also has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the regulation of private toll corporations that construct facilities that connect to the state highway system, thereby providing continuity of design and enhanced traffic operations and overall mobility for the traveling public. In addition, private construction of highway facilities for public use allows the department and local governments to utilize public road and highway funds for other needed road projects. The anticipated cost to private toll corporations who are required to comply with the proposed new sections for a typical project will be approximately \$850,000. There will be no effect on small businesses. There will be no other anticipated economic costs to persons who are required to comply with the sections as proposed.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 10 a.m. on Wednesday, August 26, 1992, in the first floor hearing room of the DeWitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested person may appear and offer oral or written comments, 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.

In addition or as an alternative to the public hearing process, comments on the proposed rules may be submitted to William A. Lancaster, P.E., Director, Division of Highway Design, 125 East 11th Street, Austin, Texas 78701-2383, (512) 416-2601.

The new sections are proposed under Texas Civil Statutes, Article 6666 and Article 6674v.1a, 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 to adopt procedural and substantive rules and regulations for the approval of construction of a private toll project that connects to the state highway system.

§11.100. Purpose Texas Civil Statutes, Article 6674v.1a, provide that a private entity or corporation may not construct any privately owned toll project which connects to a road, bridge, or highway included in the state highway system unless the project is approved by the Texas Transportation Commission and the Texas Department of Transportation. The sections under this undesignated head prescribe the procedures and conditions by which a private entity or corporation may obtain the approval of the commission and the department.

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

Applicant—A private entity or corporation, authorized by law to construct a toll project, proposing to construct a project which will connect to a road, bridge, or highway included in the state highway system

Commission—The Texas Transportation Commission.

Department—The Texas Department of Transportation.

Design manuals—The latest editions of the.

(A) operations and procedures manual of the division of highway design;

(B) operation and planning manual of the division of bridges and structures;

(C) hydraulic manual of the division of bridges and structures;

(D) *Texas Manual on Uniform Traffic Control Devices*,

(E) standard highway sign designs for Texas; and

(F) traffic control standard sheets booklet of the division of maintenance and operations.

Metropolitan planning organization—An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code, §134.

Project—A road or highway, bridge, ferry, or similar project other than those constructed, operated, maintained and/or financed under Texas Civil Statutes, Article 6674v, or toll road authorities created by counties, and that is financed in whole or in part through the issuance of revenue bonds

payable from toll revenues collected from users.

§11.102. Preliminary Studies.

(a) Studies. Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a feasibility study and a study of the social and environmental impact of the project.

(1) Feasibility study. An applicant shall conduct a feasibility study to determine the financial viability of the proposed project. The study shall include:

(A) the proposed method for financing the planning, design, construction, maintenance, and operation of the project;

(B) traffic data and projections.

(2) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, 42 United States Code, §§4321 et seq, and 23 United States Code, §109(h). The study shall include the following components:

(A) Route and alignment. The applicant shall:

(i) identify the selected route and alignment as well as the alternative routes and alignments which were considered;

(ii) provide evidence of the project's logical termini and independent utility;

(iii) provide the location of interchanges, mainlanes, grade separations, ramps, profiles and horizontal alignment, projected traffic volumes, and right-of-way limits for all routes and alignments considered; and

(iv) identify revisions or changes to state highway system facilities necessitated by the project.

(B) Environmental documentation.

(i) An applicant shall prepare an environmental assessment and/or an environmental impact statement in accordance with §11.87 of this title (relating to Environmental Assessments) and §11.88 of this title (relating to Environmental Impact Statements).

(ii) The form and content of an environmental assessment and environmental impact statement prepared by an

applicant and any decision by an applicant that an environmental impact statement is not necessary must be approved by the department.

(b) Public involvement. An applicant shall provide for public involvement by:

(1) complying with §11.85(b) of this title (relating to Early Coordination and Public Involvement);

(2) holding one or more public hearings following the completion of the studies required by this section as may be necessary to ensure participation by each community affected by the project; and

(3) notifying the department in writing not less than 10 days in advance of all public meetings and public hearings held under this section.

(c) Record. An applicant shall provide the department a summary of all public meetings and a summary and analysis of all public hearings held under this section. The summary and analysis for each public hearing shall include:

(1) the verbatim transcript of the hearing;

(2) a summary of comments received, and the response to and analysis of comments,

(3) any proposed changes in project location and design planned as a result of comments; and

(4) certification that the public hearings were held in accordance with §11.85 of this title (relating to Early Coordination and Public Involvement), and the Civil Rights Act of 1964.

(d) Revision to environmental document. Following the public hearing, an applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process.

§11.103. Application.

(a) To secure approval of a project, an applicant must file with the department an initial application in a form prescribed by the department, and must submit the following items with the application:

(1) preliminary studies and the record and analysis of public involvement completed in accordance with §11.102 of this title (relating to Preliminary Studies);

(2) an analysis of project impact, which must include the following:

(A) integration with state highway system and, if located within the jurisdiction of a metropolitan planning orga-

nization, certification from that organization that the project is compatible with the existing regional transportation plan;

(B) economic impact based on a study assessing the potential impact of the project on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties;

(C) impact on trade with Mexico, consisting of an assessment of the potential impact of the project on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the state and the Republic of Mexico, or in a county adjacent to such a county; and

(3) preliminary design, as shown on a design schematic certified by a registered professional engineer to be in accordance with the design manuals with respect to:

- (A) geometrics;
- (B) typical sections;
- (C) pavement design;
- (D) interchange design;
- (E) bridge and culvert size;
- (F) traffic control; and
- (G) environmental protection and mitigation measures.

(b) If the department finds that the initial application meets the requirements of subsection (a) of this section, and that the preliminary design is in compliance with the design manuals, it shall notify the applicant of its findings and shall conduct one or more public hearings to receive public comment on the proposed project. Following that notification, the applicant shall submit to the department construction plans and specifications. If the department finds the plans and specifications to be in compliance with the design manuals and the latest version of the department's standard specifications for construction of highways, streets, and bridges, it shall submit the application together with the its findings and recommendations to the commission for appropriate action.

(c) Upon completion of the project the applicant shall file with the department a set of the as-built plans certified by a registered professional engineer certifying that the project was completed in accordance with the plans and specifications.

§11.104. Project requirements.

(a) Field changes. Any design field change during the course of construction shall be certified by a registered professional engineer as being in conformance with the department's design standards contained in the design manuals. A design field change relating to the connection of the proposed project with the state highway system must be approved by the department.

(b) State and federal law. An applicant shall comply with all federal and state laws and regulations applicable to the project and shall provide or obtain all permits, plans, and other documentation required by a federal, state, or local governmental entity.

(c) Speed limit. Upon completion of the project, posted speed limits for the various categories of vehicles shall be established in accordance with the procedures utilized by the department for the state highway system, but, in no case shall such limits exceed the maximum prima facie speed limits prescribed by federal law for a public road having the same characteristics.

(d) Access. For proposed projects which will provide new access to a roadway requiring Federal Highway Administration (FHWA) approval of changes in access control, the applicant shall submit to the department all data necessary to request FHWA approval.

(e) Work on state right-of-way. All work required within the limits of state owned right-of-way shall be accomplished only pursuant to express written agreement with the department and at the sole expense of the applicant. This work will include all connections with, and necessary modifications to, state highways, and any necessary preliminary engineering and construction inspection. The department may, however, allow work to be accomplished by the applicant on appurtenant facilities.

§11.105. Hearing. A public hearing held by the department for the purposes of §11.103(b) of this title (relating to Application), shall be conducted by the executive director or his designee. Any persons, including, but not limited to, official representatives of a county, municipality, metropolitan planning organization, or other governmental entity, and any individual, group, or association may provide comment.

§11.106. Commission action.

(a) The commission may approve the construction of a project if it finds that the project:

(1) will be consistent with the state transportation plan or an existing regional transportation plan developed by a metropolitan planning organization, if any, of a municipality within whose municipal limits or extraterritorial jurisdiction the proposed project is to be located;

(2) will have no significant adverse impact on the environment;

(3) will have no adverse impact on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties;

(4) will have no adverse impact on the free flow of trade between the Republic of Mexico and the State of Texas with respect to a project located in whole or in part in a county adjacent to the border between the State and the Republic of Mexico or in a county adjacent to such a county; and

(5) will produce the revenue sufficient to finance the construction, maintenance, operation, design, and planning of the project based upon accurate traffic data and projections.

(b) Approval of the project shall be by written order of the commission and may contain specified conditions, including, but not limited to, the mitigation of adverse impacts to the environment and environmental enhancements identified during the environmental and public involvement phases of project development.

§11.107. Compliance.

(a) If, subsequent to commission approval and prior to completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement for commission approval of the project, the applicant may not connect the project to any portion of the state highway system.

(b) If, subsequent to commission approval and completion of the project, the applicant, for any reason, fails or refuses to satisfy any requirement concerning the operation and maintenance of the project, the department shall sever the connection of the project to any portion of the state highway system and erect such barriers or barricades as may be appropriate for such purpose.

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 10, 1992.

TRD-9210849

Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: September 14, 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 notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, does not apply to board action under Articles 5.96 and 5.97)

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The State Board of Insurance, at a Board meeting scheduled for 9 a.m., September 30, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider amendments to amendatory endorsements 593 and TE 00 39A in the Texas Automobile Rules and Rating Manual (the Manual) and the Texas Standard Provisions for Automobile Insurance

Policies (the Standard Provisions). The amendments were set forth in a petition filed by Staff on July 27, 1992.

A change in format of the new Personal Auto Policy in Board Order Number 59369 necessitates the insertion of the letter "H." in front of the definition of "Business day" in Endorsement 593, as shown in exhibits attached to Staff's petition. Another change that is needed in order to make this endorsement conform to the new Personal Auto Policy is to change paragraph 2.B.5. to allow the insurer to require the policyholder to submit to a sworn proof of loss and to submit to examination under oath, as the underlined wording was inadvertently omitted by use of an outdated policy form in preparing a portion of Endorsement 593. This new language is also shown in exhibits attached to Staff's petition, which exhibits also show that this endorsement is being renumbered as Endorsement 593A.

A change in format of the new Truckers Coverage Form and Garage Coverage Form necessitates insertion of different lettering designations for various paragraphs in Endorsement TE 00 39A, as shown in exhibits attached to Staff's petition, which exhibits also show that this endorsement is being renumbered as Endorsement TE 00 39B.

The amendments to the Manual and Standard Provisions are proposed to be adopted

effective for all policies issued on and after 12:01 a.m., 15 days after publication of notice of the Board Order in the *Texas Register*

Copies of the full text of the proposed amendments to the endorsements in the Manual and Standard Provisions are available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number O-0892-48-1).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210759 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

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



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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 313. Athletic Trainers

General Requirements and Guidelines

• 25 TAC §313.6

The Advisory Board of Athletic Trainers (board) withdraws the effectiveness of emergency amendment to §313.6, which was published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4033). The amendment is being adopted on a permanent basis in this issue of the *Texas Register*.

Issued in Austin, Texas, on August 6, 1992.

TRD-9210755

James Glenn Murray
Chairman
Advisory Board of Athletic Trainers

Effective date: August 6, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 834-6615





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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 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 109. Transactions Exemption from Registration

• 7 TAC §109.17

The State Securities Board adopts new §109.17, concerning federal savings banks, without changes to the proposed text as published in the June 9, 1992, issue of the *Texas Register* (17 TexReg 4153).

The section provides greater certainty with regard to the availability of the exemption under the Securities Act, §5.L.

The section clarifies the status of federal savings banks for purposes of the Securities Act, §5.L.

No comments were received regarding adoption of the new section.

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

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210794 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: August 28, 1992

Proposal publication date: June 9, 1992

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

Chapter 133. Forms

• 7 TAC §133.34

The State Securities Board adopts new §133.34, concerning undertaking regarding non-issuer sales pursuant to §139.14, with changes to the proposed text as published in the June 9, 1992, issue of the *Texas Register* (17 TexReg 4154).

The section will decrease the likelihood that the exemption contained in §139.14 would be relied upon improperly. The change reflects that the adoption occurred in July rather than October as was set forth in the proposal.

The section provides a form upon which certain users of the §139.14 exemption can commit that the proceeds from sale of their securities will not inure to the benefit of the issuer of the securities.

No comments were received regarding adoption of the new section.

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

§133.34. *Undertaking Regarding Non-Issuer Sales Pursuant to §139.14.* The State Securities Board adopts by reference the undertaking regarding non-issuer sales pursuant to §139.14 of this title (relating to Non-Issuer Sales) in July 1992. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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 6, 1992.

TRD-9210799 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: August 28, 1992

Proposal publication date: June 9, 1992

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

Chapter 139. Exemptions by Rule or Order

• 7 TAC §139.13

The State Securities Board adopts new §139.13, concerning exemption for resales under SEC Rule 144 and Rule 145(d), without changes to the proposed text as published in the June 9, 1992, issue of the *Texas Register* (17 TexReg 4154).

The section provides an additional exemption to cover rare situations in which non-issuer owners of securities are unable to sell their securities pursuant to one or more exemptions under the Securities Act, including §5.C(1).

The section provides a new exemption to fill a narrow gap that exists by virtue of the fact that the Act, §5.C(1), is too narrow to cover certain legitimate non-issuer sales of securities that are not otherwise exempt.

No comments were received regarding adoption of the new section.

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

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210795 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: August 28, 1992

Proposal publication date: June 9, 1992

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

• 7 TAC §139.14

The State Securities Board adopts the new §139.14, concerning an exemption for certain new section not covered by the Securities Act, §5.C(1), with changes to the proposed text as published in the June 9, 1992, issue of the *Texas Register* (17 TexReg 4154). The changes concern citations to other exemptions and are contained in paragraph (4)(A). There was no intent to eliminate a person's ability to exclude sales made pursuant to such exemptions from the count of persons to whom sales are made under the new section.

The section provides an additional exemption to cover rare situations in which non-issuer owners of securities are unable to sell their securities pursuant to one or more exemptions under the Securities Act, including §5.C(1).

The section provides a new exemption to fill a narrow gap that exists by virtue of the fact

that the Act, §5.C(1), is too narrow to cover certain legitimate non-issuer sales of securities that are not otherwise exempt.

No comments were received regarding adoption of the new section.

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

§139.14. Non-Issuer Sales. The State Securities Board, pursuant to the Securities Act, §5.T, exempts from the securities registration requirements of the Securities Act, §7, the offer and sale of any securities, provided the following conditions are met.

(1) Who may sell. Offers or sales may be made by an owner of the securities, or any person acting on the owner's behalf, so long as the owner is not the issuer of the securities.

(2) Dealer and agent registration. Any person (other than the owner) who acts as an agent of the owner in connection with a sale to any prospective purchaser in a transaction exempt from securities registration by virtue of this section shall be registered as either a dealer or agent under the Act, as applicable.

(3) Use of proceeds. The proceeds of the sale shall be for the benefit of the owner and not directly or indirectly for the benefit of the issuer of the securities.

(4) Number of sales.

(A) The owner, together with any persons acting in concert with the owner, may make no more than 15 sales in any 12-month period under and in reliance on this section, exclusive of sales made to the issuer, or in compliance with the Act, §§5.0, 6.F, or 5.H; §109.3 of this title (relating to Sales to Institutions Under the Securities Act; §5.H); §139.4 of this title (relating to Private Resales Under SEC Rule 144A); §139.7 of this title (relating to Sales of Securities to Non-Residents); or §139.13 of this title (relating to Resales under SEC Rule 144 and Rule 145(d)), except as the allowable number of sales may be increased as provided in subparagraph (B) of this paragraph.

(B) The number of sales that may be made under subparagraph (A) of this paragraph may be increased to a higher number as approved by the securities commissioner in response to a written request based on the particular circumstances of a specific transaction. If the securities com-

missioner approves a higher number of sales in accordance with the provisions of this subparagraph, then in the particular case addressed by the written request, the higher number of approved sales will be allowed.

(C) The exemption provided by this section may not be combined with sales made pursuant to the Act, §5.C(1), to exceed sales otherwise allowable under this section.

(5) Filing requirement for certain persons. Any person who is a director, executive officer, or owner of 15% or more of a class of voting securities or other ownership interests of the issuer who wishes to make sales under and in reliance on this section must file a Form 133.34 with the securities commissioner no later than 15 days after the first receipt of any portion of the consideration for the securities being sold.

(6) Anti-fraud provisions. Nothing in this section is intended to or should be construed as in any way relieving owners or persons acting on behalf of owners from an existing duty to disclose to prospective investors information adequate to satisfy the anti-fraud provisions of the 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 August 6, 1992.

TRD-9210796 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: August 28, 1992

Proposal publication date: June 9, 1992

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

Chapter 143. Administrative Guidelines for Registration of Real Estate Investment Trusts

• 7 TAC §§143.1, 143.3, 143.8

The State Securities Board adopts amendments to §§143.1, 143.3, and 143.8, concerning administrative guidelines for registration of real estate investment trusts, without changes to the proposed text as published in the June 12, 1992, issue of the *Texas Register* (17 TexReg 4227). The amendments, along with adoptions to repeal existing §§143.12-143.21 and create new §§143.12-142.23, have the overall effect of reflecting provisions that were included in the most recent amendments to the North American Securities Administrators' Association, Inc. (NASAA) real estate investment trust guidelines.

The sections allow for continued uniformity with other states in applying standards for registration of real estate investment trusts.

The section reflects the current version of the guidelines as promulgated by NASAA.

No comments were received regarding adoption of the amendments.

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

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210797 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: August 28, 1992

Proposal publication date: June 12, 1992

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

• 7 TAC §§143.12-143.21

The State Securities Board adopts the repeal of §§143.12-143.21, concerning administrative guidelines for registration of real estate investment trusts, without changes to the proposed text as published in the June 12, 1992, issue of the *Texas Register* (17 TexReg 4229). The repeals, along with adoptions to amend §§143.1, 143.3, and 143.8 and create new sections 143.12-143.23, have the overall effect of reflecting provisions that were included in the most recent amendments to the North American Securities Administrators' Association, Inc. (NASAA) real estate investment trust guidelines.

The repeal of the sections allow for continued uniformity with other states in applying standards for registration of real estate investment trusts.

The repeal of the sections allows for the chapter to reflect the current version of the guidelines as promulgated by NASAA.

No comments were received regarding adoption of the repeals

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

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

Issued in Austin, Texas, on August 6, 1992

TRD-9210798

Richard D Latham
Securities Commissioner
State Securities Board

Effective date. August 28, 1992

Proposal publication date June 12, 1992

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

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• 7 TAC §§143.12-143.23

The State Securities Board adopts new §§143.12-143.23, concerning administrative guidelines for registration of real estate investment trusts, without changes to the proposed text as published in the June 12, 1992, issue of the *Texas Register* (17 TexReg 4229). The new sections, along with adoptions to amend §§143.1, 143.3, and 143.8 and repeal §§143.12-143.21, have the overall effect of reflecting provisions that were included in the most recent amendments to the North American Securities Administrators' Association, Inc. (NASAA) real estate investment trust guidelines.

The sections allow for continued uniformity with other states in applying standards for registration of real estate investment trusts

No comments were received regarding adoption of the new sections.

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

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210800

Richard D Latham
Securities Commissioner
State Securities Board

Effective date: August 28, 1992

Proposal publication date: June 12, 1992

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

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**TITLE 16. ECONOMIC
REGULATION**
**Part II. Public Utility
Commission of Texas**
Chapter 23. Substantive Rules
Certification

• 16 TAC §23.31

The Public Utility Commission of Texas adopts an amendment to §23.31, with changes to the proposed text as published in

the February 7, 1992, issue of the *Texas Register* (17 TexReg 993). The proposed amendments to §23.66, which were published at the same time, are not being adopted.

The amendment to §23.31 concerns the licensing proceedings related to the construction of electric generating units: notice of intent proceedings and applications for certificates of convenience and necessity. The purpose of the amendment is to require a utility that is planning to build additional generating capacity to conduct a formal solicitation for the purchase of generating capacity and demand-side resources from other sources. A number of other changes that were included in the proposed amendment are not being adopted.

During the comment period, the commission received extensive written comments from a large number of interested parties. In addition, the commission conducted a series of public forums on the significant issues that relate to utility resource planning. The commission has decided that it needs additional time to evaluate all of the information that the parties provided on the general topic of resource planning and believes that it will be appropriate to issue a rule on utility resource planning and related topics later. In the meantime, the commission believes that the immediate adoption of a formal requirement that utilities solicit proposals for alternative sources of generating capacity and demand-side resources is necessary to assure that utilities meet the needs of their customers at a reasonable cost. There may be utilities that will file notices of intent or applications for certificates of convenience and necessity before a general resource planning rule is adopted, and, if they do, the commission believes that it is important to ensure that they adequately consider purchase and construction options and demand-side resources that may be offered by third parties. A formal solicitation process should ensure that utilities consider all of these options, will establish a rational timetable for their consideration of such options, and will facilitate the commission's review of issues relating to the availability and terms of purchase options.

The comments of the parties are summarized as follows.

Many parties urged the commission to adopt an integrated resource planning process that would provide for a balanced comparison of demand- and supply-side resources. The parties urging the commission to adopt an integrated resource planning process included the Public Counsel, consumer groups such as Consumers Union, Public Citizen, and Texas Citizen Action, and utilities, including the LCRA, El Paso Electric Company, and the East Texas Cooperatives. Some of these parties criticized the proposed rule, on the basis that the IRP process should involve an ongoing process with periodic filings by utilities, rather than a one-time filing in connection with an NOI.

An integrated resource planning process is the central element of the resource planning rule that the commission intends to consider further. The commission believes that additional time is required to develop an inte-

grated resource planning process for Texas. In addition, one of the factors in the decision not to adopt a more comprehensive set of rules on resource planning now is that the proposed rule did not require a comprehensive assessment of resource options on a regular basis. For this reason, it is questionable whether the adoption now of a rule that did impose such a requirement on utilities would be consistent with the Administrative Procedure and Texas Register Act.

A number of parties commented on the solicitation requirement that was included in the proposed rule. Many of these comments supported a formal solicitation requirement. Texas Industrial Energy Consumer and many of the independent power developers supported the solicitation requirement. According to TIEC, the proposed rule would eliminate the need to examine purchased power alternatives in the NOI proceeding, because the utility would be required to solicit bids from other suppliers after it receives its NOI.

Texas Utilities Electric Company opposed the requirement that a utility issue a solicitation for bids for purchases of power. TU Electric believes that this requirement would be contrary to the Public Utility Regulatory Act and inconsistent with the public interest. TU Electric asserts that there may be instances in which such a solicitation would be a costly, but useless step, and that it would increase the lead time associated with a new generating plant.

There were differences of opinion about when in the NOI/CCN process that the solicitation should take place. TIEC believes that the solicitation should take place after the NOI, so that it can be based on accurate projections of the utility's need for capacity, as determined by the commission in the NOI proceeding. Central and Southwest Services Company recommended that a utility consider offers to sell power after the approval of an NOI and before the CCN proceeding. El Paso Electric Company proposed that the solicitation process take place after the commission certifies the need for a generating resource (by granting a CCN). Houston Lighting and Power Company suggested that the solicitation should take place at the beginning of the NOI process. The East Texas Cooperatives suggested that if a solicitation of purchase offers is required as a part of the licensing process, it should take place before the NOI proceeding.

TU Electric and other parties commented that the solicitation process in the rule improperly focuses solely on price, ignoring other factors that are important in selecting a generating resource, including quality of firmness of the power, dispatchability, the type of fuel, assurances of availability and deliverability of fuel, the reliability and security of the supplier, and other contractual and technical factors.

The Lower Colorado River Authority commented that the rules should require utilities to issue solicitations for both supply-side resources and demand-side resources. The LCRA also believes that the proposed provisions on supply-side solicitation are an inflexible treatment of a complex problem and are internally inconsistent.

The commission believes that there are a number of potential suppliers of power in Texas, and that an orderly system should be adopted for a utility that needs capacity to consider offers from potential suppliers. It is the commission's belief that these offers should be considered after the commission reviews the issue of the utility's need for capacity in an NOI proceeding. This proceeding should provide valuable information to prospective suppliers concerning the need to be met. The commission also believes that utilities should consider proposals by third parties to provide demand-side or energy-efficiency resources, as a means of meeting the needs of their customers.

Under the commission rule, as amended, the utility would file an NOI when it determines that it has a need for capacity. The utility could issue a solicitation for the supply-side and demand-side resources to meet this need, either before or after the NOI proceeding is completed, but the deadline for submitting proposals must be after the approval of the NOI. If the commission approves a notice of intent that is substantially different from the utility's proposal, then the utility must update the information that it provides to interested parties to reflect the commission's changes. After evaluating the proposals it receives, the utility could enter contracts with some or all of the persons who made proposals, or it could file an application for a CCN. If the utility files an application for a CCN, it must show that it evaluated the proposals and that the option to build was better for the utility's customers than the options presented in the proposals. The solicitation process in the rule would eliminate any need for a utility to evaluate the option of purchasing capacity in the NOI proceeding. For this reason, §23.31(h)(4) is being amended to delete the requirement that the utility evaluate purchase-power options in the NOI proceeding.

The commission believes that non-price factors have a significant bearing on the evaluation of proposals to supply power or energy efficiency services. The proposed rule may have suggested that cost was the sole factor for evaluating offers to sell power. The rule that is being adopted would not prescribe the factors to be considered in evaluating alternatives or the weight to be assigned to each factor, but would require the utility to evaluate the offers and explain its evaluation in any CCN proceeding. The solicitation system that was set out in the proposed rule was also somewhat rigid and appears to have precluded a utility from negotiating with prospective suppliers about their proposals. In the commission's view, buying generating capacity or energy efficiency services is a complex matter that cannot be resolved through a simple "bid" process, and the utility should have the freedom to negotiate with persons who make proposals and should not be limited to accepting or rejecting a proposal.

Finally, the commission disagrees with the assertion of TU Electric that the commission does not have the authority to require solicitations. Section 54 of PURA requires the consideration of alternatives to the utility's proposal to construct a generating unit, and the commission believes that the solicitation requirement is a legitimate means of eliciting

offers from other parties to supply power or provide energy efficiency services that might be an economical alternative to the utility's proposal to construct a plant. The solicitation procedure is consistent with the commission's general authority to adopt rules reasonably required in the exercise of its powers under PURA, with its specific authority to adopt rules to encourage the production of economical energy by qualifying facilities, and with its responsibility to ensure that utilities consider conservation and alternative energy sources.

In general, the independent power developers that filed comments in this case supported the application of a cost cap on rate treatment for a utility-constructed generating unit that is based on the costs that the utility relied on in the NOI or CCN process. The utilities that commented opposed the cost cap, asserting, in part, that the proposed cap is inconsistent with PURA. TU Electric also argues that the cost cap would impair a utility's ability to delay a project, where lower load projections or the availability of economical power purchase opportunities warrant the delay of the utility project.

As is noted previously, the commission has decided that it needs additional time to evaluate all of the information that the parties provided on the general topic of resource planning. The commission believes the cost cap is an issue that should be decided as a part of that broader rulemaking effort and, unlike the question of solicitation, should not be decided separately. For this reason, the commission is not adopting the proposed provision concerning the cost cap now.

Most of the utilities that file comments opposed the proposed amendments relating to retail wheeling, asserting that this proposal would shift costs from industrial customers to the general body of utility customers and create reliability problems for the utility. Many of the utilities also asserted that the retail wheeling proposal is contrary to PURA. In addition, the utilities that are subject to the regulation of the Federal Energy Regulatory Commission believe that the FERC has exclusive jurisdiction over transmission access for non-ERCOT utilities.

Some of the independent power developers urged the commission to adopt the proposed rule on retail wheeling. They assert that this proposed rule would serve as a supplemental bidding mechanism that would prevent the utility from undermining the solicitation process, and that the rule would not result in stranded utility investment. According to these parties, the general body of utility customers will not be harmed, because they will not be required to pay more than they otherwise would for additional generating capacity.

In addition to these comments, Cap Rock Electric Cooperative urged the commission to adopt a rule that would facilitate wheeling of power that is produced by a utility, permitting access to remote suppliers or remote generating plants owned by the utility.

The commission believes that the question of retail wheeling is an issue that should be decided as a part of the broader rulemaking effort that it is undertaking. For this reason,

the commission is not adopting the proposed provision concerning retail wheeling at this time. The commission believes that the issue of wholesale wheeling should be a part of a broader resource planning rule. In addition, the issue of wholesale wheeling is outside the scope of the proposed rule, as it was published.

The proposed rule would eliminate the requirement that utilities evaluate the external effects of a resource option in connection with the NOI application. The Environmental Defense Fund and the LCRA opposed this proposed change. On the other hand, some utilities supported this proposed change.

The commission believes that the consideration of environmental externalities is an important feature of an integrated resource planning process. While the commission is uncertain whether the current rule is the best means of assessing the externalities associated with a resource option, the commission believes that such an analysis must be done, and that if NOI applications are filed before the commission adopts a comprehensive rule on integrated resource planning, the applicant should present information to the commission concerning the external effects of the proposed power plant. For this reason, the commission is not amending the current rule concerning the treatment of externalities in the NOI process.

The proposed rule would have required the commission to establish standard avoided costs for purchases from qualifying facilities and independent power producers. Southwestern Public Service Company and other parties asserted that purchases from IPPs are not permitted under Texas law or, alternatively, that this issue is a matter that is within the jurisdiction of the FERC, rather than this commission. The commission believes that the status in Texas of non-utility sellers of electricity, other than qualifying facilities, is questionable. For these reasons, the commission does not believe that it is appropriate to adopt a rule that would prescribe avoided cost rules that addressed sales by independent power producers.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.31 Certification Criteria

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

(1) Transmission Lines. Those lines which are used for bulk transmission of electricity which are not normally used for serving the end user. For electric utilities, this includes all lines operated at 60,000 volts or above, when measured phase-to-phase.

(2) Interoffice trunks. Those communication circuits which connect central offices.

(3) Distribution lines—Those lines from which the end user may be provided direct service.

(4) Generating unit—Any electric generating facility. This subsection does not apply to any generating unit that is less than 10 megawatts and is built for experimental purposes only, and not for purposes of commercial operation.

(b) Certificates for existing service areas and facilities. For purposes of granting certificates of convenience and necessity for those facilities and areas in which a utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing public utility service on September 1, 1975, unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes.

(1) The electrical generation or telephone central office facilities and service area boundary of a utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.

(2) The transmission or interexchange trunk facilities and service area boundary of a utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the utility's system as of September 1, 1975, shall be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission or interexchange trunk facilities in place, used or dedicated as of September 1, 1975.

(3) The facilities and service area boundary for the following types of utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within:

(A) 200 feet of any point along a local service distribution and service drop line for telephone utilities; and

(B) 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

(c) Certificates for new service areas and facilities. Except for certificates granted under subsection (b) of this section, the commission may grant applications and issue certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. For an electric utility generating unit, the commission may grant an application only when it finds that purchased power, conservation, and alternative capacity and associated energy sources available at a lower or equal cost to the ratepayers, together with capacity from qualifying facilities with which contracts have been executed, cannot be reasonably expected to be available in sufficient quantity and for sufficient duration to allow the utility to modify its capacity expansion plan so as to provide for deferral or cancellation of the generating unit for which certification is requested. The commission may issue the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission may amend or revoke any certificate issued under this section upon a finding of fact that the public convenience and necessity requires such amendment or revocation. The cost of construction of a new electric generating unit found reasonable in granting a certificate may be taken into consideration in determining the amount of construction work in progress and the plant in service associated with that unit to be included in the rate base of the utility. In addition, the projected design electrical rating, capacity factor, and heat rate associated with the unit shall be taken into consideration in determining recoverable fuel expenses associated with the operation of the unit.

(1) A certificate, or certificate amendment, is required for the following:

(A) a change in service area;

(B) a new electric generating unit;

(C) a new electric transmission line;

(D) any new electric substation outside the utility's certificated service area;

(E) a new interexchange telecommunications trunk route; and

(F) a qualifying facility which is making or plans to make retail sales of electricity to an end user, unless the end user is also the sole purchaser of the

thermal output of the qualifying facility, or unless the qualifying facility generates less than 10 megawatts of electric power by renewable resources, biomass, or waste. As a requisite to certification, the commission shall find that the ratepayers of the utility in whose service area the purchasing end user is located will not be substantially adversely impacted as a result of such retail sales.

(2) A certificate is not required for the following:

(A) a contiguous extension of those facilities described in the Public Utility Regulatory Act, §51;

(B) a new electric high voltage switching station;

(C) a new electric substation within the utility's certificated area;

(D) routine activities associated with transmission facilities that are conducted by electric utilities, including wholesale generation and transmission utilities, and as specifically noted following:

(i) the alteration of an existing transmission line to provide service to a customer-owned substation or metering point, or to a utility-owned substation, where that utility-owned substation is located within two spans of the existing transmission line, provided that any neighboring utilities and landowner(s) crossed by the transmission facilities constructed to connect the substation to the existing transmission line has given prior consent;

(ii) the rebuilding, upgrading, bundling of conductors or reconductoring of an existing transmission facility; or the installation of an additional circuit(s) on facilities that were originally designed and certificated for multiple-circuit capacity. Activities described previously which occur in the certificated area of another utility require the prior consent of that utility. For purposes of this section, "upgrading" to a higher voltage shall be limited to 230 KV or less and "rebuilding" work shall be limited to the replacement and/or respacing of structures along an existing route of the transmission line;

(iii) the relocation of all or part of an existing transmission facility due to a request for relocation to be done at the expense of the requesting party and to be relocated solely on rights-of-way provided by the requesting party. Activities described previously which occur in the certificated area of another utility require the prior consent of that utility.

(iv) the relocation or alteration of all or part of an existing trans-

mission facility to avoid or eliminate existing encroachments, provided that any neighboring utilities and landowner(s) crossed by such relocation or alteration has given prior consent,

(v) the relocation, alteration, or reconstruction of a transmission facility due to the requirements of any federal, state, county, or municipal governmental body or agency for purposes of highway transportation, public safety, or air and water quality, provided that the new construction is in close proximity to the existing facilities and that any new landowner(s) crossed by the new facilities has given prior consent;

(vi) nothing contained in clauses (i)-(v) of this subparagraph should be construed as a limitation of the commission's authority as set forth in the Public Utility Regulatory Act. Any activity described in clauses (i)-(v) of this subparagraph must be reported to the commission not less than 30 days prior to the commencement of construction, and the commission may require additional facts or call a public hearing thereon to determine whether a Certificate of Convenience and Necessity is required. Reports shall include a general description of and explanation of the reason for the project, estimated costs, a map(s) detailing the location, and copies of documents indicating landowner(s) consent, as necessary. For projects that require new or additional rights-of-way direct mail notice is required to landowners of adjacent property within 200 feet of the proposed project, the parks and recreation areas within 1,000 feet, and airports within 10,000 feet, of the proposed project is also required;

(E) the construction or upgrading of distribution facilities within the utility's service area, and

(F) new telephone central offices,

(G) however any extension, upgrading, or construction of facilities described in subparagraph (F) of this paragraph in excess of \$250,000 must be reported to the commission as prescribed in §23 13(b) of this title (relating to Statistical Reports), and the commission may require additional facts or call a public hearing thereon,

(H) use or provision of pay telephones registered under Title 47, Code of Federal Regulations, Part 68

(3) The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation

of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

(4) The commission shall render a decision approving or denying an application for a certificate required under paragraph (1) of this subsection, submitted by an entity not currently certificated to provide electric or telephone utility service within this state, within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period

(5) An electric utility that intends to apply for a certificate for a generating unit shall conduct a solicitation for proposals for supply- and demand-side resources that would allow it to defer or displace the proposed unit. The solicitation shall be based on a generating unit that the utility has proposed or intends to propose in a notice of intent proceeding. The solicitation shall be updated, if necessary, if the commission approves a notice of intent that is substantially different from the utility's proposed notice of intent. A utility conducting a solicitation shall:

(A) provide reasonable notice to persons who are likely to be interested in responding to the solicitation, including publishing notice of the solicitation in newspapers of general circulation in the major cities in its service area and the Wall Street Journal;

(B) establish a deadline for interested persons to respond to the solicitation that is not less than 120 days after the issuance of notice of the solicitation and not less than 60 days after the commission's approval of the notice of intent; and

(C) make available to interested persons information concerning the projected need for additional capacity, updated, if necessary, if the commission approves a notice of intent that is substantially different from the utility's proposed notice of intent

(6) An electric utility may not file an application for a certificate for a new generating unit until after the deadline for interested persons to respond to a solicitation under paragraph (5) of this subsection and until it has evaluated any responses to the solicitation. If the utility files an application for a certificate, it shall explain why it decided to build the generating unit, rather than accept one of the proposals in the solicitation. An electric utility shall file

an avoided cost for the new generating unit for which it seeks a certificate

(7) If an electric utility files an application for the approval of a purchase of capacity from a qualifying facility under the Public Utility Regulatory Act, §41A, following a solicitation under this subsection, it shall explain why it decided to purchase the capacity it did, rather than accept one of the other proposals submitted in the solicitation.

(8) Information concerning proposals made to the utility and its evaluation of those proposals shall be made available in any proceeding that is related to that capacity need, including a proceeding in which the utility seeks a certificate or seeks approval of a purchase of capacity from a qualifying facility under the Public Utility Regulatory Act, §41A.

(9) The amendment to paragraphs (5)-(8) of this subsection shall apply to any utility that files an application for a certificate of convenience and necessity for a new generating unit after the adoption of the amendment.

(d) Transferability of certificates. Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission

(e) Exclusiveness of certificate. Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another utility or utilities, additional certification to any other utility or utilities to all or any part of the area heretofore certificated under this section

(f) Certification forms. The commission shall adopt a form or forms which will facilitate the granting of certificates of convenience and necessity so that the granting of certificates, both contested and uncontested, will be expedited

(g) Radio-telephone service provided by a telephone utility. A telephone utility subject to the jurisdiction of the commission shall not be required to obtain a certificate of convenience and necessity or an amendment thereto to provide paging service, mobile telephone service, or rural radio service unless a base station or repeater facility is to be located outside the area certificated to the utility for wireline telephone service

(h) Notice-of-intent applications for generating plants. A utility should file a notice-of-intent (NOI) application upon deciding that it should construct a new generating plant.

(1) Purpose of proceeding. The purpose of an NOI proceeding is to decide the appropriateness of a proposed plant, in light of the alternatives, before a utility commits or expends substantial resources on the proposed plant. It is not the purpose of an NOI proceeding to decide the specific site or site facilities, whether conservation and alternative energy sources cannot meet the need, or whether the proposed plant is the best and most economical choice of technology available, because those issues will be decided in the subsequent certification proceeding in the event that the NOI is approved.

(2) Commission review. The commission will approve the NOI if it concludes that the proposed plant is feasible and reasonable, is compatible with the commission's most recent long-term forecast, and should be given further consideration in light of the alternatives. Approval of the NOI thus allows the utility to apply for certification of the proposed plant, but does not imply that the plant is the best alternative available to the utility.

(3) Standards. The commission will apply the standards in this paragraph in reviewing a utility's NOI filing, which must include the information required in the commission's application to enable the commission to decide the appropriateness of the proposed plant.

(A) Specificity of plans. The utility's plans and cost estimates must be specific enough for the proposed plant to be compared with alternatives, but the plans should not be final. In particular, the utility need not propose a specific site for a generating plant.

(B) Need. The utility must demonstrate that the proposed plant is compatible with the commission's most recent long-term forecast. Such compatibility may be demonstrated by showing that there is a reasonable likelihood that the proposed plant will be needed when scheduled to be in service. The demonstration of compatibility includes consideration of any data that materially affect the commission's most recent long-term forecast.

(4) Analysis of alternatives. The utility must show that it used a reasonable method to evaluate the advantages and disadvantages of the proposed plant and a broad range of alternatives to it.

(A) Scope. At a minimum, the following alternatives must be considered:

(i) increasing the capacity or efficiency of existing generation, transmission, and distribution facilities;

(ii) extending the life of existing generating capacity;

(iii) purchasing all or a portion of an existing or planned generating plant;

(iv) constructing a generating plant employing technologies or fuels different from those of the proposed plant; and

(v) demand-side management, including conservation and renewable resources.

(B) Method. The utility must show that it used a reasonable method of narrowing the range of alternatives and that it adequately considered the remaining alternatives to the proposed plant. At a minimum, adequate consideration includes an assessment of the following factors for the proposed plant and each feasible alternative:

(i) availability;

(ii) cost and benefits—operating and capital costs, cost of related facilities, environmental costs and benefits, and any costs and benefits, and any cost and benefits accruing to persons other than the utility and its ratepayers (for example, environmental, social and health);

(iii) reliability;

(iv) risks; and

(v) financing requirements—whether the utility can finance the proposed plant or an alternative without unduly impairing its financial condition.

(5) Definitions. The following works an terms, when used in this subsection, have the following meanings, unless the context clearly indicates otherwise.

(A) Feasible—(With respect to a proposed plant alternative) reasonably likely to work or be useful in attaining the end desired.

(B) Proposed plant—One or more generating units, including an additional generating unit at an existing generating plant site.

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 5, 1992.

TRD-9210719

John Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: August 26, 1992

Proposal publication date: February 7, 1992

For further information, please call: (512) 458-0100

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 313. Athletic Trainers General Requirements and Guidelines

• 25 TAC §313.6

The Advisory Board of Athletic Trainers (board) adopts an amendment to §313.6, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4058). The section concerns apprenticeship requirements for student trainers. The amendment clarifies the activities a student trainer may perform as part of the athletic training requirements of a college or university approved by the board and not be in violation of the Athletic Trainers Act (Act), §8.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512d, §5, which provides the Advisory Board of Athletic Trainers with the authority to adopt rules to implement its statutory duties.

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210754

James Glenn Murray
Chairman
Advisory Board of Athletic
Trainers

Effective date August 27, 1992

Proposal publication date: June 5, 1992

For further information, please call (512) 834-6615

• 25 TAC §313.13

The Advisory Board of Athletic Trainers (board) adopts an amendment to §313.13, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4058). The section concerns general requirements and guidelines for athletic trainers. The amendment increases continuing education requirements and specifies the effective date of the increased requirements and late reporting of continuing education.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512d, §5, which provide the Advisory Board of Athletic Trainers with the authority to adopt rules to implement its statutory duties.

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

Issued in Austin, Texas, on August 6, 1992.

TRD-9210756 James Glenn Murray
Chairman
Advisory Board of Athletic
Trainers

Effective date: August 27, 1992

Proposal publication date: June 5, 1992

For further information, please call. (512)
834-6615

Chapter 337. Water Hygiene

Drinking Water Standards Governing Drinking Water Quality and Reporting Re- quirements for Public Water Supply Systems

• 25 TAC §337.18

The Texas Department of Health (department) adopts an amendment to §338.18, concerning fees for services to drinking water systems, without changes to the proposed text published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2100).

The amendment deleted existing subsections (c) and (e) because the department moved them to new 25 TAC §73.41, which was adopted and published in the July 21, 1992, issue of the *Texas Register*, effective July 20, 1992. The subsections were moved strictly for organizational purposes to be in a more appropriate chapter. There were no changes to the text of subsections (c) and (e) when moved. Editorial changes to existing subsection (d) update statutory citations and the language within the subsection (See adopted subsection (c)).

The department retains its laboratory and its approved laboratory status for performing services as required under the Safe Drinking Water Act, (under new §73.41) thus providing analytical services to the regulated community with the Texas Water Commission making determinations as to the number and frequency of lab tests to be done.

No comments were received regarding adoption of the amendment.

The amendment is being adopted under the Health and Safety Code, §§12.031-12.032, which provides the Board of Health (board) with the authority to adopt rules concerning fees for public health services; and §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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 5, 1992.

TRD-9210707 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: August 26, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512)
834-6640

TITLE 28. INSURANCE Part I. Texas Department of Insurance

Chapter 28. Supervision and Conservation

Subchapter A. General Provi- sions Regarding Supervision and Conservation

• 28 TAC §28.3

The State Board of Insurance of the Texas Department of Insurance adopts new §28.3, concerning encouragement of the merger of insurers in weak financial condition with insurers in a stronger financial condition in situations where rehabilitation or conservation would be inefficient or impracticable, with changes to the proposed text as published in the April 24, 1992, *Texas Register* on (17 TexReg 2925).

The Insurance Code, Article 21.28-A, amended by House Bill 2, 72nd Legislature, regular session, effective September 1, 1991, provides that the board adopt rules concerning the encouragement of the merger of insurers in weak financial condition with insurers in a stronger financial condition in situations where rehabilitation or conservation is inefficient or impracticable. Merger is not a feasible option for all weak insurers. The condition of the economy and market trends or forces may make it impracticable for an insurer to continue to operate competitively in the market place, resulting in insolvencies which adversely affect the insureds' and policyholders' continuation of or ability to obtain insurance coverage. When these conditions exist, the Commissioner of Insurance should be empowered to notify such insurer of the department's determination that the company is in hazardous financial condition and to encourage the insurer to explore the concept of merging with an insurer in strong financial condition. Essentially, three changes were proposed by commenters recommending changes to the section as proposed and published for comment. First, changes throughout the adopted section replace second and subsequent references to "strong" or "financially strong insurers" with the term "potential merger partner" or "potential merger partners". Second, subsection (d)(1) of the adopted section, relating to identification of potential merger partners, includes changes to delete the requirement of a specific minimum rating by one of the financial rating services, to provide that internal procedures and management control requirements are to conform to generally accepted auditing stan-

dards, and to add a discretionary provision giving the Commissioner the flexibility to consider any documented characteristic of an insurer relevant to financial condition. Third, subsection (d)(2), relating to identification of financially weak insurers, is changed to add criteria related to the capabilities of management to sufficiently direct and operate the insurer.

Section 28.3 will create a method to identify and disseminate information relevant to potential merger partners for financially weak insurers. Section 28.3 is adopted as part of Title 28, Part I. Chapter 28, Subchapter A, relating to general provisions of supervision and conservation, of insurance carriers. The Section is necessary to assure the orderly and efficient administration and implementation of the new legislation encouraging mergers to prevent, where possible, insurer delinquencies and the necessity of supervision, conservatorship and/or receivership pursuant to the Insurance Code, Articles 21.28 and 21.28-A. Section 28.3 will enable the Commissioner of Insurance to evaluate the facts and circumstances of each insurer and determine if a merger should be required or if other regulatory action is more appropriate. In recognition of the fact that merger is not a feasible option for all financially weak insurers, this section is not designed or intended to prohibit the Commissioner of Insurance from taking any other regulatory action deemed necessary, and is not a condition precedent to such other action relating to insurer delinquencies or insolvencies. To further encourage the merger of insurers in weak financial condition with those in stronger financial condition, §28.3 provides that mergers pursuant to its provisions shall be acted upon in an expedited manner and shall be given precedence over other matters of a similar nature not initiated pursuant to this section.

A total of four sets of comments was received on the section as proposed and published. The American Council of Life Insurance and Government Personnel Mutual Life Insurance Company commented in favor of the section as proposed, but recommended changes to the proposal. Blue Cross and Blue Shield of Texas, Inc., and United Life Insurance Company commented against the section as proposed.

All four commenters focused comments on the "Identification of Financially Strong Insurers" as problematic. The comments urged that, under the criteria as proposed, many financially sound insurers would be excluded. Comments in this area also focused on the closed nature of the criteria as proposed, as well as the required minimum rating provided by particular professional rating organizations. The department agrees with some of these comments, and for that reason the adoption includes provisions for commissioner discretion in the consideration of particular relevant financial characteristics in determination of appropriate potential merger partners for financially weak insurers. The adoption also deletes the requirement for a minimum required financial rating from any professional rating service. One commenter identified the internal management and accounting controls provision as an area gov-

erned by generally accepted auditing standards. The department agrees and for that reason the adoption includes a reference to such standards, and deletes the reference to generally accepted accounting principles. One commenter complained that §28.3(d) does not have specific criteria. The department disagrees, and paragraphs (1) and (2) as adopted contain sufficiently specific criteria, while simultaneously providing for needed simplicity and flexibility in the criteria that are set out in such paragraphs. All four commenters objected to use of the phrase "financially strong insurers" to refer to potential merger partners. The department agrees that a better term should be used to identify such insurers. For this reason, the adoption, after initial reference to "financially weak" and "financially strong" insurers as are used in the Insurance Code, Article 21.28-A, §1, the word "stronger" and the phrase "potential merger partner" or "potential merger partners" are used instead to identify insurers placed on the list maintained by the commissioner for potential merger partners.

The new section is adopted under the Insurance Code, Articles 21.28-A and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 21.28-A, §1, authorizes and requires the State Board of Insurance to promulgate rules that encourage the merger of insurers in weak financial condition with insurers in strong financial condition. Article 1.04(b) authorizes the board to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

§28.3. The Encouragement of the Merger of Insurers in Weak Financial Condition With Insurers in a Stronger Financial Condition.

(a) Purpose and applicability. The purpose of this section is to provide the basis for encouragement of the merger of financially weak insurers with financially stronger insurers, as provided in the Insurance Code, Article 21.28-A, §1, in circumstances where rehabilitation or conservation of an insurer would be inefficient or impracticable. The provisions of this section shall be utilized in conjunction with authority granted and duties required in the Insurance Code, Articles 1.15-1.19, 1.32, 9.48, 21.28, 21.28-A, 21.28-C, 21.28-D, and 21.49-1. If a financially weak insurer, as provided in this section, indicates it does not wish to be merged with a potential merger partner, the provisions of this section shall not apply.

(b) Threshold criteria for merger. The Commissioner of Insurance, in determining whether to pursue a merger alternative under this section, shall consider the following threshold criteria:

(1) whether the corporate form of the financially weak insurance carrier is one which legally accommodates a merger alternative; and

(2) whether conservation or rehabilitation of the financially weak insurer is inefficient or impracticable.

(c) Scope of consideration. So long as the criteria of subsection (b), (1) of this section is present, the commissioner may consider and pursue merger of a financially weak insurer upon determination that merger is a feasible alternative to supervision, conservatorship, or receivership which otherwise would be required of such insurer. The commissioner is not required, however, to further pursue the alternative of merger with respect to a financially weak insurer if either of the conditions described in subsection (b), paragraphs (1) and (2) of this section is not present.

(d) Identification of potential merger partners and financially weak insurers. To facilitate the merger of financially weak insurers with financially stronger insurers, the Texas Department of Insurance shall utilize the procedures outlined in paragraphs (1) and (2) of this subsection for identification of potential merger partners and financially weak insurers, respectively.

(1) Potential merger partners are those which exhibit one or more of the following characteristics as of the close of the most recent calendar year:

(A) a review of internal management and accounting controls as required by generally accepted auditing standards which are documented by a Certified Public Accountant's audit;

(B) an operations history of at least five years with respect to all lines of insurance to be merged; and/or

(C) any other documented characteristics, including any financial conditions, deemed appropriate by the commissioner.

(2) Financially weak insurers are those which exhibit any or a combination of the following factors which would result in a finding of hazardous financial condition by the Commissioner of Insurance:

(A) the required surplus, capital, or capital stock is impaired to an extent prohibited by law;

(B) the surplus, capital, or capital stock of the company is insufficient to permit it by law to continue to write new business;

(C) the business of the insurance company is being conducted fraudulently;

(D) the insurer has attempted to dissolve or liquidate without first having made provisions satisfactory to the commissioner of insurance for the payment of liabilities arising from policies of insurance issued by such company; and/or

(E) a review of the financial condition of the insurer indicates that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public when such review is made in conjunction with the following:

(i) the kinds and nature of risks insured;

(ii) the loss experience and ownership of the insurer;

(iii) the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases;

(iv) the capabilities of management to sufficiently direct and operate the insurer;

(v) the method of operation of the insurer;

(vi) affiliations;

(vii) investments;

(viii) any contracts which lead or may lead to contingent liability; and/or

(ix) agreements with respect to which the insurer is a guarantor or surety.

(e) Compilation and maintenance of list of potential merger partners. The Texas Department of Insurance shall, on or before August 1 of each year, solicit insurers potentially meeting the criteria of subsection (d) (1) of this section to be included on a list of potential merger partners interested in pursuing merger with weak insurers. All interested potential merger partners shall be added to the list of potential merger partners compiled and maintained by the department.

(f) Procedural provisions. Any insurer identified as a weak insurer and meeting the criteria set out in subsection (b) of this section shall be provided with the list of potential merger partners in connection with a communication encouraging the weak insurer to contact potential merger partners for a possible merger. The weak insurer shall provide the department with either of the following within 30 days from the date

on which the list of insurers is mailed to the weak insurer:

(1) a letter of intent to merge, from one or more potential merger partners; provided that the Commissioner of Insurance may extend the time period for response, based upon written application of the weak insurer, and establish such conditions and limitations as are appropriate under the circumstances; or

(2) a letter or other communication indicating that the insurer has elected not to pursue the alternative of merging with any potential merger partner.

(g) Failure to respond. In the event a financially weak insurer fails to respond in accordance with subsection (f) of this section, the insurer shall be deemed to have elected not to pursue the alternative of merger.

(h) Docketing pending mergers. Any merger initiated pursuant to the provisions of this section shall have preference over other matters of a similar nature pending before the Texas Department of Insurance and shall receive official action at the earliest practicable date.

(i) In relation to other law. The provisions of this section are not intended in any manner to limit the authority conferred upon the Commissioner of Insurance in the Insurance Code or other applicable law.

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 6, 1992.

TRD-9210760 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: August 27, 1992

Proposal publication date: April 24, 1992

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

Part II. Texas Workers' Compensation Commission

Chapter 165. Rejected Risk: Injury Prevention Services

• 28 TAC §§165.1-165.4

The Texas Workers' Compensation Commission adopts §§165.1-165.4, concerning injury prevention services required by House Bill 62. Section 165.2 is adopted with changes to the proposed text published in the May 26, 1992, issue of the *Texas Register* (17 TexReg 3822). Sections 165.1, 165.3, and 165.4 are adopted without changes and will not be republished.

These sections are necessary to implement the program of safety and health inspections required by House Bill 62. The only change made in the proposed text of these sections was in §165.2(a)(1) where the reference to §164.8 was changed to refer to 164.3. This corrected an error in the published text.

These new sections provide a mechanism for employers, who are classified by the Texas Workers' Compensation Insurance Facility as rejected risk, to assess the work-place hazards and produce an accident prevention program. These sections also provide for inspection of those programs by the commission.

The only public comment received on §165.1 was from the Independent Insurance Agents of Texas. The comment recommended the rule be changed to require the facility to include the agent's name and address when providing the commission with the list of identified employers and send a copy of the employer's notification letter to the agent.

The commissioners disagreed with the recommended change because the program is designed to allow an employer to reduce loss experience and retain coverage by the facility. If the employer elects not to participate in the program but drops coverage provided by the facility, the employer may seek assistance from the agent in locating other coverage if the employer chooses to. If the facility ultimately rejects coverage, the facility should follow the normal procedure they follow today with any employer they refuse to cover. If the employer elects to pursue coverage and enter the process described in these rules, the agent does not have a role. The insurance carrier selected by the facility to underwrite the coverage will be in a position to provide assistance in assessing risks and evaluating loss history for employers.

The only public comment regarding §165.2 was from the American Insurance Association. The comment stated that the 24-hour filing requirement is too short. Because detailed follow-up surveys or multiple locations may be involved, this time should be 21 or 30 days. Thirty days is consistent with the requirement that the division report in 30 days.

The commissioners disagreed with the recommended change because the rule requires filing within 24 hours but only after completion of the consultation. The consultation will be complete when the professional source and the employer sign the hazard survey report. Twenty four hours should be more than adequate time to mail the report to the commission.

There were no public comments on the other sections.

The new sections are adopted under the Insurance Code, Texas Civil Statutes, Article 5.76-2, §4.06, regarding injury prevention requirements, which requires the commission to establish additional criteria for identifying employers and authorizes the commission to provide injury prevention services.

§165.2. Safety Consultation and Formulation of the Accident Prevention Plan.

(a) Not later than 30 days following the effective date of the rejected risk policy, or receipt of notice of identification, whichever occurs later, the policyholder shall complete a safety consultation using a source approved by the division pursuant to §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations). The consultation may be provided by:

(1) the division, subject to the conditions specified in §§164.3, 164.11, and 164.12 of this title (relating to Safety Consultation; Request for Safety Consultation from the Division, Reimbursement of Division for Services Provided to Extra-hazardous Employer);

(2) the policyholder's insurance carrier; or

(3) another professional source.

(b) The division shall provide a list of approved professional sources for inclusion with the notification letter to each policyholder notified.

(c) The safety consultant shall conduct a hazard survey at each appropriate job site of the policyholder and prepare a hazard survey report. The report shall be in a written format prescribed by the commission and shall include a description of any hazardous conditions or practices identified, along with recommendations for controlling the identified hazardous conditions or practices.

(d) The hazard survey report(s), signed by both the consultant and the policyholder, and any attachments shall be filed by the consultant with the division within 24 hours of completing the consultation.

(e) If the initial consultation and report cannot be completed in the time allowed under this section, the policyholder may apply to the commission for an extension of the time requirements upon a showing of good cause.

(f) Formulation of an accident prevention plan shall be in accordance with §164.4 of this title (relating to Formulation of Accident Prevention Plan).

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 5, 1992.

TRD-9210723 Susan Cory
General Counsel
Workers' Compensation
Commission

Effective date: September 14, 1992

Proposal publication date: May 26, 1992

For further information, please call: (512) 440-3592

• 28 TAC §165.5

The Texas Workers' Compensation Commission adopts new §165.5, without changes to the proposed text as published in the June 19, 1992, issue of the *Texas Register* (17 TexReg 4429).

This section is necessary to implement the program of safety and health inspections required by House Bill 62.

This new section provides a mechanism for employers, who are classified by the Texas Workers' Compensation Insurance Facility as an extraordinary risk, to assess the workplace hazards and produce an accident prevention program. This section also provides for inspection of those programs by the commission.

No comments were received regarding the new section.

The new section is adopted under the Insurance Code; Texas Civil Statutes, Article 5.76-2, §4.06, regarding injury prevention requirements, which requires the commission to establish additional criteria for identifying employers and authorizes the commission to provide injury prevention services.

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

Issued in Austin, Texas, on August 5, 1992.

TRD-9210724 Susan Cory
General Counsel
Workers' Compensation
Commission

Effective date: September 14, 1992

Proposal publication date: June 19, 1992

For further information, please call: (512) 440-3592

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter C. Resident Rights

• 40 TAC §19.203, §19. 217

The Texas Department of Human Services (DHS) adopts amendments to §19. 203 and §19.217, concerning notice of rights and services and directives and durable powers of attorney for health care. The purpose of the amendment to §19.203 is to add as a right of nursing facility residents formulation of advance directives concerning their medical treatment. Section 19.217 is amended to require that all residents, not just new admissions, be given information regarding advance directives.

The justification for the amendments is to comply with the Omnibus Budget Reconciliation Act of 1990.

The amendments will function by ensuring that nursing facility residents have every opportunity to receive the benefit of making an advance directive that reflects their choices concerning receiving or refusing medical treatment.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The amendments are adopted in compliance with federal requirements to be effective April 6, 1992.

§19.203. Notice of Rights and Services.

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

(g) The resident has the right to refuse treatment, to formulate an advance directive (as specified in §19.217 of this title (relating to Directives and Durable Powers of Attorney for Health Care)), and to refuse to participate in experimental research.

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

(h) -(n) (No change.)

§19.217. Directives and Durable Powers of Attorney for Health Care. Competent adults may issue directives or durable powers of attorney for health care, subject to the requirements of this section, and the Texas Natural Death Act and law governing Durable Powers of Attorney for Health Care. (See §19.219 of this title (relating to Documentation for the Delegation of Long Term Care Resident's Rights) and §19.205(b) of this title (relating to Free Choice).) When an individual has issued no directive, has no legal guardian, and has been determined by the physician to be incapable of understanding and exercising his rights, treatment decisions must be made according to the Texas Natural Death Act, §672.009.

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

(3) Facility Responsibility (Resident Self-Determination). The nursing facility must maintain policies and procedures regarding the following rules with respect to all adult individuals receiving services provided by the facility.

(A) All individuals must be provided with the following written information:

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

(B) -(F) (No change.)

(G) When an individual is in a comatose or otherwise incapacitated state,

and therefore is unable to receive information or articulate whether he has executed an advance directive, the family, surrogate, or other concerned person must receive the information concerning advance directives. The facility must provide this information to the resident once he is no longer incapacitated.

(H)-(J) (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 August 7, 1992

TRD-9210818 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 6, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆
• 40 TAC §19.204

The Texas Department of Human Services (DHS) adopts amendments to §19. 204 and §19.1301, concerning protection of resident funds and pharmacy services, in its Long Term Care Nursing Facility Requirements rule chapter. The purpose of the amendment to §19.204 is to clarify that nursing facility residents' individual financial record must be available to residents or their legal representatives through quarterly statements and on request. The purpose of the amendment to §19.1301 is to require pharmacists to report any irregularities to the attending physician and the director of nursing.

The justification for the amendments is to comply with the Omnibus Budget Reconciliation Act of 1987.

The amendments will function by ensuring that nursing facility residents and their legal representatives receive information about residents' financial status on request.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The amendments are adopted in compliance with federal requirements to be effective April 1, 1992.

§19.204. Protection of Resident Funds.

(a)-(l) (No change.)

(m) Quarterly statement. The individual financial record must be available, through quarterly statements and on request, to the resident or his legal representative. The statement must reflect any recipient funds which the facility has deposited in an account as well as any recipient funds held by the facility in a petty cash account. The statement must include at least the following:

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

(n)-(s) (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 August 7, 1992.

TRD-9210819

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 1, 1992

For further information, please call: (512)
450-3765

Subchapter N. Pharmacy Services

• 40 TAC §19.1301

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The amendments are adopted in compliance with federal requirements to be effective April 1, 1992.

§19.1301. Pharmacy Services. The facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in §19.1906 of this title (relating to Use of Outside Resources). See also §19.701(12) and (13) of this title (relating to Quality of Care) for information concerning drug therapy and medication errors.

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

(5) Drug regimen review.

(A) (No change.)

(B) The pharmacist must report any irregularities to the attending physician and the director of nursing, and these reports must be acted upon.

(C) (No change.)

(6)-(7) (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 August 7, 1992.

TRD-9210820

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 1, 1992

For further information, please call: (512)
450-3765

Subchapter O. Infection Control

• 40 TAC §19.1402

The Texas Department of Human Services (DHS) adopts an amendment to §19.1402, concerning universal precautions against spread of infection among nursing facility residents, in its Long Term Care Nursing Facility Requirements rule chapter. The purpose of the amendment is to identify potentially infectious materials and clarify requirements regarding hepatitis B vaccinations for facility employees.

The justification for the amendments is to comply with Occupational Safety Hazards Administration (OSHA) rules concerning bloodborne pathogens.

The amendments will function by ensuring that the section meets federal standards concerning protection of facility residents and employees from exposure to infectious agents.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The amendments are adopted in compliance with federal requirements to be effective March 6, 1992.

§19.1402. Universal Precautions. Universal precautions shall be used in the care of all residents because a reliable source cannot identify all those persons infected with blood-borne pathogens. Facilities are responsible for complying with Occupational Safety Hazards Administration (OSHA) regulations found at 29 Code of Federal Regulations, §1910.1030 (relating to Bloodborne Pathogens).

(1) Universal precautions apply to blood and other potentially infectious materials.

(A) Other potentially infectious materials means the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations when it is difficult or impossible to differentiate between body fluids.

(B) Universal precautions do not apply to feces, nasal secretions, sputum, tears, urine, and vomitus unless they contain visible blood.

(C) Universal precautions do not apply to saliva, unless it contains visible blood. Gloves need not be worn when feeding residents and when wiping saliva from skin.

(2) General principles of universal precautions.

(A) All health-care workers shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane exposure when contact with blood or other body fluids of any resident is anticipated.

(i) Gloves shall be worn for touching blood and body fluids, mucous membranes, or non-intact skin of all residents, for handling items or surfaces soiled with blood or body fluids, and for performing venipuncture and other vascular access procedures.

(ii)-(iv) (No change.)

(B)-(E) (No change.)

(3) (No change.)

(4) The facility shall implement infection control procedures including, but not limited to, universal precautions. The intent is to provide protection from predictable exposure to blood or body fluids, regardless of known or suspected human immunodeficiency virus (HIV) serologic status. It is not the intent to mandate protection from all possible or theoretical exposure to blood or body fluids. This represents minimum precautions and facilities are free to utilize more stringent policies for the protection of their employees and residents.

(5) Facility employees and residents shall be protected from direct exposure to blood and body fluids to prevent exposure to HIV and hepatitis B virus (HBV). The following outlines minimum requirements for specific departments in a facility.

(A) Overall facility requirements.

(i) The facility's policy regarding hepatitis B vaccinations shall address all circumstances warranting such vaccinations and identify employees at risk of directly contacting blood or potentially infectious materials. All such employees shall be offered Hepatitis B vaccinations within 10 days of employment. If the employee initially declines Hepatitis B vaccination but at a later date, while still at risk of directly contacting blood or potentially infectious materials, decides to accept the vaccination, the facility must make the vaccination available at that time.

(ii)-(ix) (No change.)

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

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

Issued in Austin, Texas, on August 7, 1992.

TRD-9210821

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: March 6, 1992

For further information, please call: (512)
450-3765

Chapter 49. Child Protective Services

Subchapter E. Intake and In- vestigation Services

• 40 TAC §49.519

The Texas Department of Human Services (DHS) adopts new §49.519, with changes to the proposed text as published in the July 3, 1992, issue of the *Texas Register* (17 TexReg 4738).

The justification of the new section is to comply with House Bill (H.B.) 2252 as passed by the 72nd Texas Legislature. House Bill 2252 amended the Texas Family Code (TFC) by adding TFC, §34.054, which requires DHS to adopt voluntary standards for investigators of child abuse. The provisions of the adopted section meet all the requirements specified in TFC, §34.054.

The amendment will function by encouraging "professionalism and consistency in the investigation of suspected child abuse" as specified in TFC, §34.054.

No comments were received regarding adoption of the amendment. The department, however, has initiated one change to the text. In §49.519(6), the department has changed the number of the rule that is referenced from §49.514 to §49.513.

The new section is adopted under the Human Resources Code, Title 2, Chapter 41, which authorizes the department to enforce laws for the protection of children. The new section is also adopted under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect, and under §34.054 in particular, which authorizes the department to develop and adopt voluntary standards for individuals who investigate suspected child abuse at the state or local level.

§49.519. Voluntary Standards for Investigators of Child Abuse. To encourage professionalism and consistency in the investigation of reports of child abuse as

specified in the Texas Family Code (TFC), §34.054, the Texas Department of Human Services (DHS) recommends the voluntary standards set forth in this section to individuals who investigate reports of child abuse.

(1) As specified in TFC, §34.054, and in Item 2300(1) of DHS's *Minimum Standards for Child-Placing Agencies*, each individual responsible for investigating reports of child abuse, or for conducting interviews during investigations of child abuse, must receive at least 15 hours of professional training every year.

(2) The professional training curriculum for individuals who conduct investigations or investigation interviews must include information about:

(A) physical abuse as defined in TFC, §34.012(1)(C)-(D), including the distinction between:

(i) physical injuries resulting from abuse; and

(ii) ordinary childhood injuries;

(B) psychological abuse as defined in TFC, §34.012(1)(A)-(B);

(C) available treatment resources; and

(D) the types of abuse reported to the investigating agency for whom the investigator works, including information about:

(i) the incidence of each type of abuse reported; and

(ii) the receipt of false reports.

(3) Individuals who conduct videotaped or audiotaped interviews with suspected victims of child abuse must ensure that the interviews meet the requirements for recorded interviews specified in TFC, §11.21(b), including the requirement in §11.21(b)(3) that the recording be accurate and unaltered.

(4) Children often disclose information about the occurrence of abuse progressively over the course of several interviews. Accordingly, individuals who investigate reports of child abuse must:

(A) conduct enough interviews and examinations of suspected victims of child abuse to give them sufficient opportunity to disclose what they know; but

(B) refrain from conducting additional interviews or examinations after a child has disclosed enough information to confirm or rule out the occurrence or risk of abuse, unless there is a good reason for conducting additional interviews or examinations. When there is a good reason for conducting additional interviews or examinations, the individual responsible for conducting the interviews or examinations may consult with a supervisor or another individual with appropriate expertise to confirm the need for additional interviews or examinations. All decisions about conducting additional interviews or examinations as specified in this subparagraph must be based on the best interest of the child.

(5) Investigating agencies must keep all documents generated during investigations in the child's case record for the life of the record.

(6) Investigators must make reasonable efforts to locate and notify each parent of a suspected victim of child abuse regarding the disposition of the investigation, except for absent parents who are abusive, dangerous, or otherwise unlikely to protect the child, as specified in §49.513 of this title (relating to Notification About Results).

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 7, 1992.

TRD-9210822

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

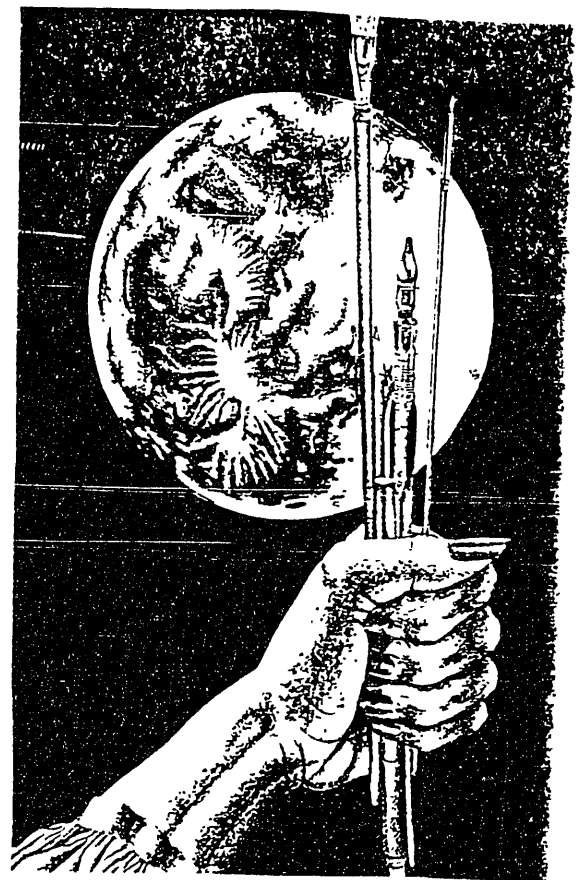
Proposal publication date: July 3, 1992

Effective date: August 31, 1992

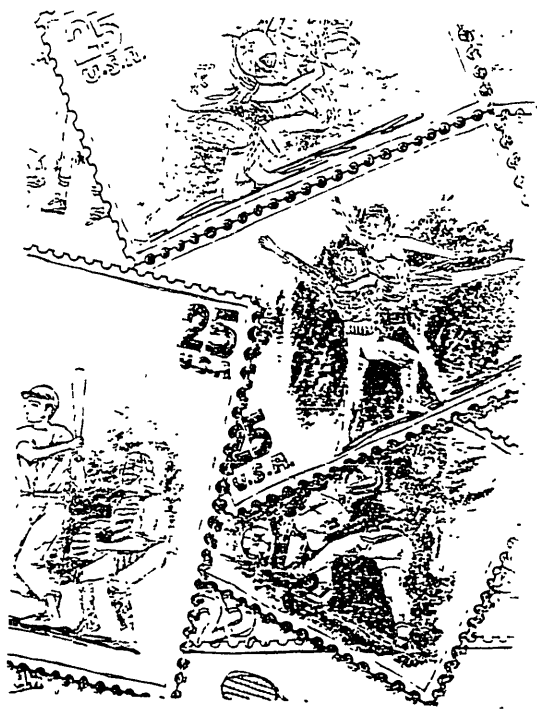
For further information, please call: (512)
450-3765



10-25



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10-28

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

Friday, August 28, 1992, 9 a.m. The Texas Agricultural Diversification Program Board of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924-A, Austin. According to the agenda summary, the board will discuss and act on the minutes of June 11, 1992 meeting; candidates for full proposal; presentations on Grants Numbers 63, 49, 36, 3, 53 and 45; discuss other business; and act on next meeting date.

Contact: Richard Salmon, P.O. Box 12847, Austin, Texas 78711, (512) 463-7577.

Filed: August 11, 1992, 9:32 a.m.

TRD-9210932

Thursday, September 10, 1992, 10 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 §76.075(b) and Texas Administrative Code §7.18(b) by Jesse Thompson.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: August 10, 1992, 9:36 a.m.

TRD-9210855

Texas Air Control Board

Wednesday, August 19, 1992, 1 p.m. The Mobile Source Emissions Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act on entering into a contract to study the air quality benefits of various alternative fuels technologies and program scenarios in support of state legislative fleet conversion requirements and potential State Implementation Plan revisions; consider and act on entering into a contract for consulting services to develop communication system requirements necessary to establish the host computer network for the vehicle inspection/maintenance programs in Texas; and report regarding the status of mobile source control activities.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:43 a.m.

TRD-9210872

Wednesday, August 19, 1992, 1:30 p.m. The Enforcement Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act on penalty and policy task force recommendations; compliance history task force recommendations, phase II; minor source policy; and entering into a contract between the Texas Air Control Board and the Texas Department of Health to conduct inspections for National Emission Standards for Hazardous Air Pollutants (Asbestos).

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:42 a.m.

TRD-9210871

Wednesday, August 19, 1992, 2:30 p.m. The Hearings Oversight Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act on recommendations regarding the calling and processing of contested case hearings at the Texas Air Control Board.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:42 a.m.

TRD-9210870

Wednesday, August 19, 1992, 4 p.m. The Monitoring and Research Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will give a report on the selection of sites for Air Toxics Monitoring Network; update on monitoring in calendar year 1992 to support urban air shed modeling; report on future United States Environmental Protection Agency requirements for monitoring to support photochemical modeling and to determine whether national ambient air quality standards are met.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:42 a.m.

TRD-9210869

Thursday, August 20, 1992, 8 a.m. The Regulation Development Committee of the Texas Air Control Board will meet at Park

35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act to adopt proposed revisions to the General Rules regarding filing of emission data as required by the federal clean air act; for public hearings on proposed revisions to the General Rules regarding banking of emissions reductions to be used for offsets in ozone nonattainment areas; and for public hearings on proposed revisions to the State Implementation Plan regarding board orders for sulfur dioxide emissions limits at grandfathered facilities in Harris County.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:41 a.m.

TRD-9210868

Thursday, August 20, 1992, 9 a.m. The Community Involvement Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will give a report on the July 30-31, 1992 meeting of the Texas Environmental Education Advisory Committee; discussion of August 18, 1992 waste audit pilot project-preview of legislative mandate for all state agencies to institute recycling programs; discussion of joint TACB/Texas Young Lawyer's Association environmental education project for tree-planting at Texas schools; discussion of October Clear Car Month activities, joint project with TACB, American Automobile Association, American Lung Association, and Automobile Service Association; and report on implementation plans for electronic bulletin board.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:41 a.m.

TRD-9210867

Thursday, August 20, 1992, 9:30 a.m. The Budget and Finance Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act on entering into a contract to study the air quality benefits of various alternative fuels technologies and program scenarios in support of state legislative fleet conversion requirements and potential state implementation plan revisions; entering into a contract for consulting services to develop communication system requirements necessary to establish the host computer network for the vehicle inspection/maintenance programs in Texas; entering into a contract between the Texas Air Control Board and the Texas Department of Health to conduct inspections for national emission standards

for hazardous air pollutants (Asbestos); on the process of submission of the 1994-95 biennium budget; consider and possibly act on proposal to collocate the offices of the Texas Air Control Board and Texas Water Commission Human Resources Department at the Stephen F. Austin Building.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:39 a.m.

TRD-9210865

Thursday, August 20, 1992, 10 a.m. The Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the agenda summary, the board will call the meeting to order; consider and act on approval of the minutes; matters relating to East Austin Gasoline Terminals, Travis County; public testimony; consideration and action on proposed rules; proposed contracts; enforcement report; measures relating to permit processing; staff report on exparte communications; committee meeting reports; discuss new business; and adjourn.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: August 10, 1992, 10:40 a.m.

TRD-9210866

Texas Education Agency

Wednesday, August 19, 1992, 8:30 a.m. The State Textbook Science Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:43 a.m.

TRD-9210937

Wednesday, August 19, 1992, 8:30 a.m. The State Textbook Trade/Industrial Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consider-

ation for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:42 a.m.

TRD-9210936

Wednesday, August 19, 1992, 8:30 a.m. The State Textbook Journalism Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:42 a.m.

TRD-9210935

Wednesday, August 19, 1992, 8:30 a.m. The State Textbook Fine Arts Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:42 a.m.

TRD-9210934

Wednesday, August 19, 1992, 9 a.m. The Texas Center for Educational Technology Governing Board of the Texas Education Agency will meet at the University of Texas Education Building, RMEDB 238, Room EDB 238, Austin. According to the agenda summary, the board will review draft of annual report; approve executive director job; elect board officers; approve intellectual property policy; approval of dissolution

of assets; approve 1992-1993 operating budget; tour of college of education; discussion of research and development; executive director report; and adjourn.

Contact: Delia R. Duffey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9400.

Filed: August 11, 1992, 9:42 a.m.

TRD-9210933

Thursday, August 20, 1992, 8:30 a.m. The State Textbook Business Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:43 a.m.

TRD-9210938

Thursday, August 20, 1992, 8:30 a.m. The State Textbook Driver Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:43 a.m.

TRD-9210939

Thursday, August 20, 1992, 8:30 a.m. The State Textbook Industrial Technology Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:43 a.m.

TRD-9210940

Thursday, August 20, 1992, 8:30 a.m. The State Textbook Computer Science Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:44 a.m.

TRD-9210941

Friday, August 21, 1992, 8:30 a.m. The State Textbook Bilingual Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:44 a.m.

TRD-9210942

Friday, August 21, 1992, 8:30 a.m. The State Textbook Social Studies Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-111, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:44 a.m.

TRD-9210943

Friday, August 21, 1992, 8:30 a.m. The State Textbook Language Arts Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will discuss textbooks and/or systems under consideration for adoption in November 1992. Immediately following the discussion, the committee will vote on books to be recommended to the State Board of Education for adoption. All State Textbook Committee members remain under no-contact rules until after the close of the discussion/balloting meeting.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: August 11, 1992, 9:44 a.m.

TRD-9210944

Friday, September 18, 1992, 9 a.m. The Task Force of Various State Agencies that Regulate Proprietary Schools of the Texas Education Agency will meet at the William B. Travis Building, 17th and Congress, Room 1-109, Austin. According to the complete agenda, a task force comprised of staff from the Texas Education Agency, Texas Guaranteed Student Loan Corporation, and other state agencies that regulate proprietary schools will discuss the agencies' actions to improve program quality and reduce default rates. The task force will then summarize the meeting and discuss the next meeting.

Contact: Dee Bednar, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-3560.

Filed: August 11, 1992, 9:44 a.m.

TRD-9210945

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**Advisory Commission on
State Emergency Commu-
nications**

Wednesday, August 19, 1992, 1 p.m. The Work Session of the Advisory Commission on State Emergency Communications will meet at the ACSEC Offices, 1101 Capital of Texas Highway South, B-100, Austin. According to the complete agenda, the commission will call the meeting to order; review the Coastal Bend Council of Governments proposed 9-1-1; regional plan amendments; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: August 10, 1992, 4 p.m.

TRD-9210913
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General Services Commission

Wednesday, August 12, 1992, 9:30 a.m. The General Services Commission met at 1711 San Jacinto Street, Central Services Building, Room 402, Austin. According to the emergency revised agenda summary, the commission considered and discussed space allocation for the Office of the Attorney General in the William P. Clements Building; considered and may have approved FY 93 operating budget; considered and discussed participation in the equipment financing master lease program; update on the Statewide Telecommunications Plan; considered, discussed and authorized use of emergency construction funds to install a new roof on the State Treasury Building; met in executive session to consider the status of the purchase of real property in Houston and Austin; receive a report from counsel concerning the status of all pending litigation; and considered personnel matters. The emergency status was necessary due to imminent threat to safety and loss of property due to roof leaks and water-damaged ceiling, creating an urgent public necessity and required emergency action by the commission.

Contact: Judith M. Porras, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: August 10, 1992, 3:28 p.m.

TRD-9210905

Office of the Governor-Texas Information and Referral Project

Tuesday-Wednesday, August 18-19, 1992, 9 a.m. The Health and Human Services Dictionary Workgroup of the Information and Referral Project of the Office of the Governor will meet at the Brown-Healy Building, 4900 North Lamar Boulevard, Room 4501, Austin. According to the complete agenda, the workgroup will call the meeting to order; discuss approval of minutes; discuss agency comments on first draft of dictionary; and on Wednesday, the workgroup will discuss how to identify, define, and incorporate other agencies service terms into dictionary; discuss approval of Taxonomy Coding System; approval of second draft of dictionary; and adjourn.

Contact: Carol Price, 201 East 14th Street, Austin, Texas 78701, (512) 463-1782.

Filed: August 6, 1992, 3:22 p.m.

TRD-9210753

Texas Department of Health

Monday, August 17, 1992, 8:30 a.m. The Texas State Board of Examiners of Marriage and Family Therapists of the Texas

Department of Health will meet at the Exchange Building, Room S-402; 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of the April 27, 1992 board meeting; discuss and possibly act on: executive director's report on application/license update; Council on Licensure, Enforcement and Regulation (CLEAR), resolution concerning the North Texas Society of Clinical Hypnosis, Sunset Commission update, and degrees printed on marriage and family therapists license; examination survey and examination to be used for licensed marriage and family therapists in Texas; deferred payment for graduate school loans; insurance/third party reimbursement; continuing education; appointment of committees; approval of applications for licensure; setting of board meeting calendar; and hear presentation by Michael Lake, Ph.D.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. 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: August 7, 1992, 1:33 p.m.

TRD-9210812

Texas High-Speed Rail Authority

Tuesday, August 18, 1992, 9:30 a.m. The Board of Directors of the Texas High-Speed Rail Authority will meet at the John H. Reagan Building, Room 101, 15th Street and Congress Avenue, Austin. According to the agenda summary, the board will call the meeting to order; consider performance review; meet in executive session; deliberation and action; consider operating budget for 1993; consider payment of bills; citizen communications; and monthly report.

Contact: Allan Rutter, 823 Congress Avenue, Suite 1502, Austin, Texas 78701, (512) 478-5484.

Filed: August 10, 1992, 4:23 p.m.

TRD-9210915

Texas Department of Housing and Community Affairs

Tuesday, August 11, 1992, 8 a.m. The Finance Committee of the Board of Directors of Texas Department of Housing and Community Affairs held an emergency meeting at 811 Barton Springs, Suite 300 Conference Room, Austin. According to the complete agenda, the board will consider and possibly act on the annual budget of the

Housing Finance Division and to convene in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g), to discuss personnel issues. Individuals who require auxiliary aids and services for this meeting should contact Aurora Carvajal, ADA responsible employee, at 475-3822 or Relay Texas 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made. The emergency status was necessary as Texas Civil Statutes, Article 4413(501) required the board to approve the Housing Finance Division budget on or before September 1, 1992.

Contact: Susan Leigh, 811 Barton Springs Road, Austin, Texas 78701, (512) 475-3933.

Filed: August 7, 1992, 1:31 p.m.

TRD-9210811

Texas Department of Insurance

Tuesday, August 18, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the appeal of Cypress Multinational Corporation from a decision of the Texas Workers' Compensation Insurance Facility. Docket Number 1917.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: August 10, 1992, 3:56 p.m.

TRD-9210909

Wednesday, August 19, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the petition of Eagle General Agency for review of routine matter subject to summary procedures. Docket Number 11542.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: August 10, 1992, 3:56 p.m.

TRD-9210910

Thursday, October 15, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number R1926 to consider final action on proposed new 28 TAC §7.401, concerning the regulation of

risk-based capital and surplus requirements for life insurance companies, fraternal benefit societies, mutual life insurance companies and stipulated premium companies. The proposed rule was published in the July 28, 1992 issue of the *Texas Register* (17 TexReg 5262). The comment period expires on August 28, 1992.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: August 10, 1992, 1:02 p.m.

TRD-9210876

Lamar University System- Board of Regents

Thursday, August 13, 1992, 9 a.m. The Board of Regents Committees of the University of Texas System met at the John Gray Institute, Map Room, 855 Florida Street, Beaumont. According to the agenda summary, the Finance and Audit and Personnel Committees met in executive session under provisions of Vernon's Civil Statutes, Article 6252-17, §2(3)(g), personnel; the following committees met: athletic, building and grounds; policy manual review subcommittee; and committees met in executive session.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 7, 1992, 1:35 p.m.

TRD-9210813

Thursday, August 13, 1992, 9 a.m. (Revised agenda). The Board of Regents Committees of Lamar University System met at the John Gray Institute, Map Room, 855 Florida Street, Beaumont. According to the agenda summary, the personnel committee met in executive session under provisions of Vernon's Civil Statutes, Article 6252-17, §2(3)(g), personnel, to advise and discuss threatened or contemplated litigation.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 7, 1992, 4:01 p.m.

TRD-9210836

Thursday, August 13, 1992, 1:30 p.m. The Board of Regents of Lamar University System met at the John Gray Institute, Map Room, 855 Florida Street, Beaumont. According to the agenda summary, the board called the meeting to order; give invocation; discussed approval of minutes; ratification of financial statements; considered recommendations of finance and audit committee; personnel committee; athletic committee; academic affairs committee; building and grounds committee; policy manual review

subcommittee; heard regents comments and suggestions; and adjourned.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 10, 1992, 9:41 a.m.

TRD-9210856

Texas Department of Licens- ing and Regulation

Monday, August 17, 1992, 9 a.m. The Inspections and Investigations, Air Conditioning of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, 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 Robert James Ginther doing business as Jim Ginther Services for violation of Vernon's Texas Civil Statutes, Articles 8861 and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: August 7, 1992, 9:25 a.m.

TRD-9210776

Thursday, August 20, 1992, 1 p.m. The Policies and Standards of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will consider the final adoption of proposed amendments to Chapter 66, Registration of Property Tax Consultants Rules and Regulations.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78701, (512) 463-7348.

Filed: August 7, 1992, 9:25 a.m.

TRD-921077

Wednesday, September 9, 1992, 1 p.m. (Rescheduled from August 20, 1992). The Policies and Standards of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will consider the final adoption of proposed amendments to Chapter 66, Registration of Property Tax Consultants Rules and Regulations.

Contact: Jimmy G. Martin, 920 Colorado Street, Austin, Texas 78701, (512) 463-7348.

Filed: August 11, 1992, 9:16 a.m.

TRD-9210920

Texas National Guard Ar- mory Board

Sunday, August 16, 1992, 9 a.m. The Texas National Guard Armory Board will meet at the Hawthorn Suites Hotel (Trinity Room), 7900 Brookriver Drive, Dallas. According to the agenda summary, the board will discuss approval of the minutes of previous meeting; discuss administrative matters; construction/renovation/maintenance update; property/leases; and establish date and location of next meeting.

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763-5426, (512) 451-6394.

Filed: August 7, 1992, 9:21 a.m.

TRD-9210766

Texas Board of Licensure for Nursing Home Admin- istrators

Wednesday, August 19, 1992, 10 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 210, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; chairman's welcome; discuss approval of the minutes from July 10, 1992; discuss and possibly take action on a proposed rule to increase continuing education requirements to 40 hours; final vote on continuing education fee of \$10 per attendee; disciplinary action: surrender of License #4956, Beverly Ridgeway; discuss LAR; presentation by NAB representative; discuss changing the exam requirements to include the NAB and state standards exam, and discontinuing the requirement of the state comprehensive exam; set next meeting date; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: August 6, 1992, 1:17 p.m.

TRD-9210742

State Preservation Board

Tuesday, August 18, 1992, 2 p.m. The State Preservation Board will meet at the Capitol Building, Senate Finance Committee Room 301, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of minutes; discuss old, unfinished, new business; and adjourn.

Contact: Dealey Herndon, 201 East 14th Street, Room 503, Austin, Texas 78701, (512) 463-5495.

Filed: August 10, 1992, 4:31 p.m.

TRD-9210917

Public Utility Commission of Texas

Monday, August 17, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10883-application of Brazos Electric Power Cooperative, Inc. for a certificate of convenience and necessity for proposed generating facilities.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1992, 2:30 p.m.

TRD-9210831

Tuesday, August 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 prehearing conference in Docket Number 11353-application of GTE Southwest, Inc. to revise Texas General Exchange Tariff to add the Switched Access System (SAS) to the features and associated equipment for the provision of emergency number services (911).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1992, 2:30 p.m.

TRD-9210830

Thursday, August 20, 1992, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the commission will have a presentation by Merrill Lynch and Moody's Investor Service on financial issues effecting public utilities.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 6, 1992, 3:36 p.m.

TRD-9210757

Railroad Commission of Texas

Monday, August 17, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North

Congress Avenue, 12th Floor Conference Room 12-126, Austin. Agendas follow.

The commission will consider and/or decide various applications and other matters within the jurisdiction of the agency including oral argument at the time specified. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: August 7, 1992, 10:53 a.m.

TRD-9210789

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. The commission will discuss a proposed training agreement for the Gas Utility Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel, and pending litigation; and consideration of a contract for public information services.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: August 7, 1992, 10:53 a.m.

TRD-9210788

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters, including discussion about signing the master equipment lease purchase agreement and the equipment lease financing resolution.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: August 7, 1992, 10:52 a.m.

TRD-9210787

The commission will consider and act on Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: August 7, 1992, 10:52 a.m.

TRD-9210786

The commission will consider and act on Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: August 7, 1992, 10:52 a.m.

TRD-9210785

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: August 7, 1992, 10:52 a.m.

TRD-9210784

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcelo Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: August 7, 1992, 10:51 a.m.

TRD-9210783

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: August 7, 1992, 10:48 a.m.

TRD-9210782

The commission will consider category determination under sections 102(c)(1) (B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6755.

Filed: August 7, 1992, 10:47 a.m.

TRD-9210781

The commission will consider and act on the Surface Mining and Reclamation Division Director's report on division administration, budget, procedures, and personnel matters. The commission will consider and act on contingent notice of contract award for the Alcoa AML Revegetation and Erosion Control Contract.

Contact: Melvin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6901.

Filed: August 7, 1992, 10:47 a.m.

TRD-9210780

The commission will hold its monthly state-wide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6729.

Filed: August 7, 1992, 10:47 a.m.

TRD-9210779

Texas Real-Estate Commission

Friday, August 14, 1992, 1 p.m. The Agency Disclosure Subcommittee of the Texas Real-Estate Commission will meet at TREC Headquarters, Room 235A, Second Floor, 1101 Camino La Costa, Austin. According to the complete agenda, the subcommittee will review proposed disclosure forms.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3960.

Filed: August 6, 1992, 2:41 p.m.

TRD-9210744

School Land Board

Tuesday, August 18, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, Room 831, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of previous board meeting minutes; pooling applications, Lassater (Travis Peak) Marion County; and Giddings Austin Chalk 3 Field, Fayette County; applications to lease highway rights of way for oil and gas, Fayette, Brazos and Burleson Counties; coastal public lands, lease application, Corpus Christi Bay, Nueces County; easement applications, Galveston Bay, Chambers County and Laguna Madre, Cameron County; structure permit terminations, Espiritu Santo, Calhoun County; Laguna Madre, Kleberg County; structure permit requests, Espiritu Santo, Calhoun County; Laguna Madre, Kleberg County; structure permit renewals, Laguna Madre, Cameron County and Laguna Madre, Kenedy County; meet in executive session to give an update on Hidalgo County acquisition; and discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas

78701, (512) 463-5016.

Filed: August 10, 1992, 4:27 p.m.

TRD-9210916

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 minutes from the July 15, 1992 board meeting; District Director appointments; EPA's proposed rules for NPDES permitting of confined animal feeding operations; Clean Water Council NPS Subcommittee report; 1992 annual state-wide meeting of Soil and Water Conservation District Directors; General Services Commission travel rules; reports from agencies and guests; 1994-1995 Legislative appropriation request; 1992 technical assistance grant funds allocations; 1992 conservation assistance funds; review proposed changes to agency rules; board member travel; and next regular 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 11, 1992, 9:26 a.m.

TRD-9210922

Structural Pest Control Board

Monday, August 24, 1992, 9 a.m. The Structural Pest Control Board will meet at the Thompson Conference Center, Room 2.110, 2405 East Campus Drive, Austin. According to the agenda summary, the board will discuss approval of the minutes of July 7, 1992 board meeting; public comment period; discuss Africanized Bee training and identification; update on termiticides by Dr. Roger Gold; consider the following proposals for decision: 92-11, application of Francisco Grajeda for technician-apprentice license; 92-12, application of Jamey Wilson for technician-apprentice license; 92-13, Complaint 05-011-392 Alvin Chevalier doing business as Tera Pest Control; and meet in executive session to discuss pending litigation.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 834-4066.

Filed: August 6, 1992, 2:42 p.m.

TRD-9210748

Teacher Retirement System of Texas

Friday, August 14, 1992, 10 a.m. The Board of Trustees of the Teacher Retirement System of Texas will meet at 1000 Red River Street, Fifth Floor Board Room, Austin. According to the complete agenda, the board will consider appreciation awards; adoption of 1992-93 fiscal year TRS operating budget; consider adoption of 1992-93 fiscal year operating budget for Texas Public School Retired Employees Group Insurance Program; consider transfer of funds from interest account to expense account; certification of estimate of state contributions to be received by the Retired School Employees Group Insurance Fund for the Fiscal Year ending August 31, 1993; consider appointment to Investment Advisory Committee; consider procedure for approval of Fuduciary Insurance provider; proposed emergency rules relating to debt collection procedures (34 TAC §§49.1-49.7); consider amendment to bylaws of Board of Trustees relating to meeting agenda item for changes to approved stock lists; and the board may enter into closed session as provided by the Texas Open Meetings Act, §2(g), to discuss personnel.

Contact: Mary Godzik, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

Filed: August 6, 1992, 3:39 p.m.

TRD-9210758

Texas A&M University System, Board of Regents

Friday, August 14, 1992, 4:30 p.m. (Revised agenda). The Board of Regents of the Texas A&M University System will hold a special telephonic meeting at the Board of Regents Meeting Room, College Station. According to the complete agenda, the board will consider bids and award contact for the Business Administration Building/Library Facilities, Phase I, Project at Texas A&M University; appointment of Vice-president for Institutional Advancement at Tarleton State University; and approval of guidelines for legislative appropriations requests; and awarding honorary degree at Texas A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 10, 1992, 10:36 a.m.

TRD-9210864

Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Tuesday, August 18, 1992, 10 a.m. The Audit Committee of the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association will meet at 301 Congress Avenue, Suite 2025, Austin. According to the agenda summary, the committee will consider and possibly act on adoption of audit plans to audit: the transition of Guaranty Association (GA) accounts and funds from the receiver's staff to the GA; GA funds and accounts after the transition from the receiver's staff; the GA's contributions to assumption and service agreements for multi-state insolvencies; NOLHGA assessments for various disposition committee expenses; and selection of independent auditors to conduct these audits.

Contact: Charles S. LaShelle, 301 Congress Avenue, Suite 2025, Austin, Texas 78701, (512) 495-6445.

Filed: August 10, 1992, 2:30 p.m.

TRD-9210889



Texas Southern University

Tuesday, August 11, 1992, 5 p.m. The Development Committee of the Board of Regents of Texas Southern University met at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Austin. According to the complete agenda, the committee considered reports from the administration on university fund raising.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: August 6, 1992, 2:41 p.m.

TRD-9210745



The Texas State University System

Thursday, August 13, 1992, 1:30 p.m. The Building Committee of the Texas State University System met at the First Floor Conference Room, Houston Harte University Center, Angelo State University, San Angelo. According to the complete agenda, the committee will review construction projects and documents for the four Universities in the system including: the Campus Master Plan update at Angelo State University; selection of consultants for the Art Laboratory-IV and Post Office projects; a change order for the Bowers Stadium project and easement agreements all at Sam Houston State University; the selection of a

consultant for the Campus Signage project; approval of purchase orders for the J. C. Kellam Landscaping project; approval of change order for the Student Center Sky-light project; approval of the Master Plan Update; lease-purchase agreement for the Energy Management System project; a sale of property all at Southwest Texas State University; and preliminary plans for the Fine Arts Modifications project and a purchase order for the Jackson Field Renovation project both at Sul Ross State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects).

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 7, 1992, 1:13 p.m.

TRD-9210802

Thursday, August 13, 1992, 2:30 p.m. The Curriculum Committee of The Texas State University System met at the First Floor Conference Room, Houston Harte University Center, Angelo State University, San Angelo. According to the complete agenda, the committee reviewed matters of the board and the four universities in the system including: all matters of curriculum, including Fourth Class Day Reports; and non-substantive program changes, new degree programs, combining of departments, additions, deletions and retention of courses, admission standards, out-of-state and out-of-country studies. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects).

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 7, 1992, 1:13 p.m.

TRD-9210803

Thursday, August 13, 1992, 3:30 p.m. The Governmental Relations Committee of The Texas State University System met at the First Floor Conference Room, Houston Harte University Center, Angelo State University, San Angelo. According to the complete agenda, the committee reviewed legislative agenda of next biennium and other governmental activities.

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 7, 1992, 1:14 p.m.

TRD-9210805

Thursday-Friday, August 13-14, 1992, 1:30 p.m. and 8:30 a.m. respectively. The Board of Regents of the Texas State University System will meet at the First Floor Conference Room, Houston Harte University Center, Angelo State University, San Angelo. According to the agenda summary,

the board will review matters of the board and the four universities in the system including: all matters will be reviewed by the Building Committee, the Curriculum Committee and the Finance Committee, including budgets, as submitted to the full board for review and approval; personnel actions including new employees, promotions, resignations, terminations, salary-salary supplements and special appointment of any system employee including the presidents and chancellor; discuss litigation; budgetary changes at each university and the system office; contract approvals at each university and the system office; acceptance of gifts; admission requirements and fees; room rates; food service contracts and land purchases and sales. Also to be considered are the no smoking-tobacco policy at Angelo State University, the Texas Educational Opportunity Plan reports, System Employee Benefits Program and the System Financial Advisory and Bond Counsel selections and Legislative Appropriation requests. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects) .

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 7, 1992, 1:13 p.m.

TRD-9210801

Thursday-Friday, August 13-14, 1992, 3 p.m. and 9:30 a.m. The Finance Committee of the Texas State University System will meet at the First Floor Conference Room, Houston Harte University Center, Angelo State University, San Angelo. According to the complete agenda, the committee will review financial matters of the System Office and the four universities in the system including: approval of operating budgets for fiscal year 1992-93 for the System Administration, Angelo State University, Sam Houston State University, Southwest Texas State University, Sul Ross State University and Sul Ross Uvalde Center. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects).

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 7, 1992, 1:13 p.m.

TRD-9210804

University of Texas Health Science Center at San Antonio

Wednesday, August 19, 1992, 3 p.m. The Institutional Animal Care and Use Committee of the University of Texas Health Science Center at San Antonio will meet at the

History of Medicine Conference Room 5.070LIB, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the committee will discuss approval of minutes; protocols for review; discuss subcommittee reports; and other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (512) 567-3717.

Filed: August 10, 1992, 3:15 p.m.

TRD-9210904

University of Texas System

Thursday, August 13, 1992, 9 a.m. The Board of Regents and Standing Committees of the University of Texas System met at the Regents' Meeting Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda summary, the board will consider amendments to RRR; Chancellor's Docket (submitted by System Administration); UT System-Legislative Appropriations request for 1994-1995; degree programs; UT Austin-amend undergraduate admissions policy; parking fees; appointments to endowed academic positions and Investment Advisory Committee; agreements; buildings and grounds matters including approval of final plans and award of contracts; investment matters; acceptance of gifts, bequests and estates; establishment of endowed positions and funds; intellectual property matters; potential litigation; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: August 7, 1992, 2:18 p.m.

TRD-9210816

Texas Water Commission

Monday, August 17, 1992, 9:30 a.m. The Task Force 21: Waste Management Policy for the Future of the Texas Water Commission will meet at the John F. Reagan Building, 105 West 15th Street, Room 105, Austin. According to the complete agenda, the task force will have opening remarks; update from subcommittees (Revenue, Waste Reduction Advisory, Local Review); assessment rules; update on draft spill rules; discuss upcoming rulemaking; regulatory policy on 90-day tanks; and hear public comment.

Contact: Minor Hibbs, 1700 North Congress Avenue, Austin, Texas 78734, (512) 463-7760.

Filed: August 10, 1992, 4:02 p.m.

TRD-9210914

Tuesday, September 15, 1992, 10 a.m. 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 to consider Application Number 5414 (new) and Application Number 08-2457 (revised) submitted by the City of Dallas.

Contact: Mike Rogan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 7, 1992, 9:21 a.m.

TRD-9210765

Tuesday, September 29, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 512, Austin. According to the agenda summary, the commission will hold a public hearing to consider Application Number 12-3737A by Southwest Materials, Inc.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 7, 1992, 9:21 a.m.

TRD-9210764

Regional Meetings

Meetings Filed August 6, 1992

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, August 19, 1992, at 9 a.m. Information may be obtained from Joe Rogers, 3911 Morse Street, Denton, Texas 76208, (817) 566-0904. TRD-9210751.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, August 27, 1992, at 4 p.m. Information may be obtained from Joe Rogers, 3911 Morse Street, Denton, Texas 76208, (817) 566-0904. TRD-9210750.

The El Oso Water Supply Corporation Board of Directors met at their Office, FM 99, Karnes City, August 11, 1992, at 7 a.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (512) 780-3539. TRD-9210749.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, August 13, 1992, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9210740.

The Hansford Appraisal District Board met at 709 West Seventh Street, Spearman, August 12, 1992, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081, (806) 659-5575. TRD-9210752.

The Hunt County Appraisal District Board of Directors met at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, August 13, 1992, at 6:30 p.m. Information may be obtained from Mildred Compton, P.O. Box 1339, Greenville, Texas 75401, (903) 454-3510. TRD-9210761.

The Leon County Central Appraisal District Appraisal Review Board met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, August 11, 1992, at 9 a.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9210743

The Lower Colorado River Authority Retirement Benefits Committee met at 3700 Lake Austin Boulevard, Board Room, Travis County, Austin, August 11, 1992, at 1 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9210741.

The Nolan County Central Appraisal District Board of Directors met at the Nolan County Courthouse, Third Floor, Sweetwater, August 11, 1992, at 7 a.m. Information may be obtained from Lane Compton, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9210762.

The South Plains Association of Governments Executive Committee met at 1323 58th Street, Lubbock, August 11, 1992, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730 Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9210746.

South Plains Association of Governments Board of Directors met at 1323 58th Street, Lubbock, August 11, 1992, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730 Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9210747.

Meetings Filed August 7, 1992

The Blanco County Central Appraisal District Board of Directors met at the Courthouse Annex, Avenue G and Seventh Street, Johnson City, August 11, 1992, at 5 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4013. TRD-9210768.

The Brazos Valley Development Council Executive Committee met at the Brazos Center, 3232 Briarcrest, Room 102, Bryan, August 13, 1992, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9210773.

The Central Appraisal District of Taylor County Board of Directors met at 1534 South Treadaway, Abilene, August 12, 1992, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9210809.

The Coleman County Water Supply Corporation Board of Directors met at the Corporation Office, 214 Santa Anna Avenue, Coleman, August 12, 1992, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9210778.

The County Education District Number 11 Board of Trustees met at the Snyder ISD Administration Building, 2612 College Avenue, Snyder, August 11, 1992, at 7 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9210772.

The Dallas Area Rapid Transit HOV Planning and Development Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, August 7, 1992, at 11:30 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210839.

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, August 11, 1992, at 10 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210840.

The Dallas Area Rapid Transit Mobility Impaired Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, August 11, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210844.

The Dallas Area Rapid Transit Governmental Relations Committee met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, August 11, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210842.

The Dallas Area Rapid Transit Bus Planning, Development and Operations met at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, August 11, 1992, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210841.

The Dallas Area Rapid Transit Budget and Finance Committee met at the DART

Office, 601 Pacific Avenue, Board Conference Room, Dallas, August 11, 1992, at 4:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9210838.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Dallas, August 26, 1992, at 10 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9210763.

The Eastland County Appraisal District Appraisal Review Board will meet at the Commissioners' Courtroom, Eastland County Courthouse, Main Street, Eastland, August 26, 1992, at 9:30 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9210774.

The Education Service Center, Region 17 Board of Directors will meet at 1111 West Loop 289, Board Room, Lubbock, August 18, 1992, at 4 p.m. Information may be obtained from Virgil Ed Flathouse, 1111 West Loop 289, Lubbock, Texas 79416, (806) 793-4802. TRD-9210775.

The Education Service Center, Region 20 Board of Directors will meet at 1314 Hines Avenue, San Antonio, August 19, 1992, at 2 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 299-2400. TRD-9210769.

The Erath County Appraisal District Board of Directors met at 1390 Harbin Drive, Board Room, Stephenville, August 13, 1992, at 7 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9210767.

The Gulf Bend Mental Health and Mental Retardation Center Board of Trustees Committee met at the Gulf Bend Center, 1404 Village Drive, Victoria, August 12, 1992, at noon. Information may be obtained from Sharon Pratkan, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9210810.

The Hamby Water Supply Corporation Board of Directors met at the Hamby Water Supply Office, 408 Elmdale Road North, Abilene, August 13, 1992, at 7:30 p.m. Information may be obtained from Bertha Linahan, 408 Elmdale Road North, Abilene, Texas 79601, (915) 548-2510. TRD-9210771.

The Hickory Underground Water Conservation District Number One Board and Advisors met at 2023 South Bridge Street, Brady, August 13, 1992, at 6:45 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9210808.

The Hickory Underground Water Conservation District Number One Board and Advisors met at 2023 South Bridge Street, Brady, August 13, 1992, at 7 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9210807.

The Hockley County Appraisal District Board of Directors met at 1103-C Houston Street, Levelland, August 10, 1992, at 7 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9210814.

The Jack County Appraisal District Board of Directors will meet at 210 North Church Street, JCAD Conference Room, Jacksboro, August 18, 1992, at 7 p.m. Information may be obtained from Donna Hartzell, P.O. Box 958, Jacksboro, Texas 76459, (817) 567-6301. TRD-9210815.

The Palo Pinto County Education District met at the Palo Pinto County Court House, Commissioners Court, Palo Pinto, August 13, 1992, at 6:30 p.m. Information may be obtained from Ron Munday, 102 North West Sixth Avenue, Mineral Wells, Texas 76067, (817) 325-6404. TRD-9210837.

The Region IV Education Service Center Board of Directors met in the Board Room, Region IV Education Service Center, 7145 West Tidwell Road, Houston, August 11, 1992, at 6 p.m. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77701, (713) 462-7708. TRD-9210832.

The Sulphur-Cypress Soil and Water Conservation District Number 419 met at 1809 Ferguson, Suite B, Mt. Pleasant, August 12, 1992, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 Ferguson, Suite B, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9210770.

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The Bi-County Water Supply Corporation met at the Bi-County Office, FM Road 2254, Pittsburg, August 11, 1992, at 7 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9210863.

The Dallas Area Rapid Transit Board of Directors held an emergency meeting at the DART Office, 601 Pacific Avenue, Board Conference Room, Dallas, August 11, 1992, at 5 p.m. The emergency status was necessary as it was of the utmost importance that the DART Board of Directors take immediate action upon implementing the DART Service Plan. Information may be obtained from Nancy McKethan, 601 Pacific Ave-

nue, Dallas, Texas 75202, (214) 658-6237. TRD-9210846.

The Dewitt County Appraisal District Board of Directors will meet at the Dewitt County Appraisal Office, 103 Bailey Street, Cuero, August 18, 1992, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9210877.

The Jones County Appraisal District Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, August 20, 1992, at 8:30 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9210879.

The Lower Neches Valley Authority Board of Directors will meet at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, August 18, 1992, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9210878.

The Manville Water Supply Corporation Board of Directors met at the Manville Water Supply Corporation, Spur 277, Coupland, August 13, 1992, at 7 p.m. Information may be obtained from LaVerne Rohlack, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9210854.

The Nortex Regional Planning Commission Executive Committee will meet at the Nortex Regional Planning Commission, Conference Room, Galaxy Center Building, 4309 Jacksboro Highway, Wichita Falls, August 20, 1992, at noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281. TRD-9210850.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto County Courthouse, Palo Pinto, August 19, 1992, at 3 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250. TRD-9210882.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto County Courthouse, Palo Pinto, August 19, 1992, at 3:15 p.m. Information may be ob-

tained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250. TRD-9210881.

The Region One Education Service Center Board of Directors met at 1900 West Schunior, Edinburg, August 13, 1992, at noon. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611. TRD-9210847.

The Region 14 Education Service Center Board of Directors will meet at 1850 Highway 351, Abilene, August 20, 1992, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601-4750, (915) 676-8201. TRD-9210851.

The San Antonio River Authority Board of Directors will meet at the SARA General Office, Second Floor Conference Room, 100 East Guenther Street, San Antonio, August 19, 1992, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373. TRD-9210852.

The Sabine Valley Center Personnel Committee will meet at the East Texas Baptist University, Watson Room, 1209 North Grove, Marshall, August 17, 1992, at 5:30 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9210861.

The Sabine Valley Center Finance Committee will meet at the East Texas Baptist University, 1209 North Grove, Marshall, August 17, 1992, at 6 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9210862.

The Sabine Valley Center Care and Treatment Center will meet at the East Texas Baptist University, 1209 North Grove, Marshall, August 17, 1992, at 6 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9210853.

The Sabine Valley Center Board of Trustees will meet at the East Texas Baptist University, 1209 North Grove, Marshall,

August 17, 1992, at 7 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9210860.

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, August 19, 1992, at 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9210880.

The South Texas Private Industry Council, Inc. will meet at the Zapata Civic Center, Highway 83 and Seventh Street, Zapata, August 27, 1992, at 4 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (512) 722-0546. TRD-9210912.

The Trinity River Authority of Texas Resources Development Committee will meet at 5300 South Collins, Tarrant County, Arlington, August 17, 1992, at 11 a.m. Information may be obtained from J. Sam Scott, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9210911.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, August 24, 1992, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9210857.

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The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Kendall Appraisal Office, Boerne, August 20, 1992, at 9 a.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9210923.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, August 20, 1992, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9210921.

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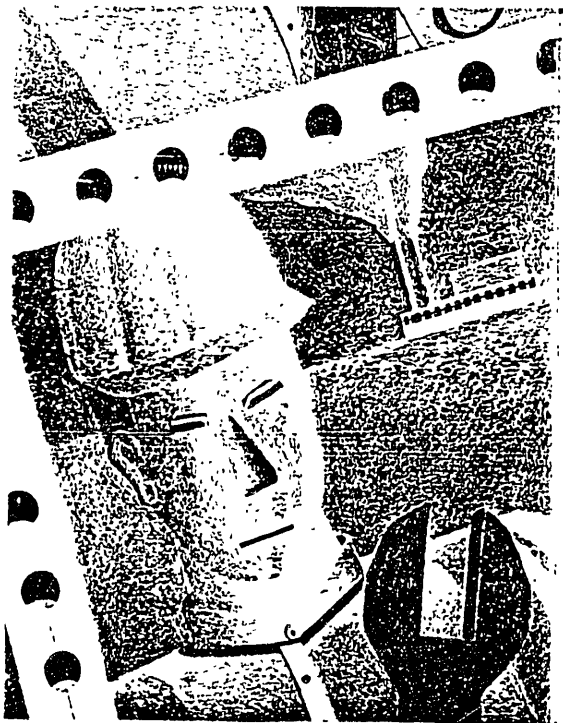


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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Human Services Public Notice

Filed: August 7, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-20, Amendment Number 360. The amendment revises the reimbursement methodology for personal care services to compensate providers for meeting providers standards that require that there be no break in service for "priority" clients. The amendment is effective May 1, 1992. If additional information is needed, please contact Linda Carsner, (512) 450-3215.

Issued in Austin, Texas, on August 7, 1992.

TRD-9210823 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: August 7, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-23, Amendment Number 362. The amendment reflects the survey and certification process resulting from the provisions of §4212 of the Omnibus Reconciliation Act of 1987 (OBRA '87) and incorporates the preprint pages issued under Program Memorandum 92-3. The amendment is effective October 1, 1990. If additional information is needed, please contact Marc Gold, (512) 450-3174.

Issued in Austin, Texas, on August 7, 1992.

TRD-9210826 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: August 7, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-21, Amendment Number 359. The amendment increases the maximum number of personal care hours per recipient per year from 30 to 50 and increases the length of a prior authorization period from six to twelve months. The amendment is effective July 1, 1992. If additional information is needed, please contact Linda Carsner, (512) 450-3215.

Issued in Austin, Texas, on August 7, 1992.

TRD-9210824 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: August 7, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-25, Amendment Number 364. The amendment reflects that the Medicaid program will pay for one family planning examination per recipient per fiscal year per provider. The amendment is effective April 1, 1992. If additional information is needed, please contact Beth Weber, (512) 338-6460.

Issued in Austin, Texas, on August 7, 1992.

TRD-9210827 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: August 7, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-22, Amendment Number 361. The amendment reflects the provisions of §4752(e) of the Omnibus Reconciliation Act of 1990 (OBRA '90) which addresses physician provider standards for services to pregnant women and to children. The amendment is effective January 1, 1992. If additional information is needed, please contact Joe Branton, (512) 338-6505.

Issued in Austin, Texas, on August 7, 1992.

TRD-9210825 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in the county identified in the July 21, 1992, issue of the *Texas Register* (17 TexReg 5151). That county is also listed in this public notice. Potential contractors desiring to construct a 90-bed nursing facility in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Programs Section, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS

by 5 p.m. September 14, 1992, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in 40 TAC §19.2004(q) are not met. The signed agreement must also require the potential contractor to provide, within 10 work-

ing days after the date of selection, a surety bond or other financial guarantee acceptable to DHS ensuring payment in the event of default. If the 180-day deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline is not met, liquidated damages are 10% of the estimated total cost of the proposed or completed facility. Fourth, there must be acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to the Texas Department of Health (TDH). Each application must be complete at the time of its receipt. DHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, DHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

Occupancy rates for identified threshold counties are listed below:

County Number	County Name	Number of Months Over	Number of Months					
			JAN	FEB	MAR	APR	MAY	JUN
230	Upshur	6	94.0	92.9	93.1	92.1	92.3	90.7

Issued in Austin, Texas, on August 7, 1992.

TRD-9210829 Nancy Murphy
 Agency Liaison, Policy and Document Support
 Texas Department of Human Services

Filed: August 7, 1992

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Public Notice Open Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for the county identified below, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each

of five months in the continuous February-June, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Program Section, Long-Term Care Department, Mail Code W-519, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m. September 14, 1992, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order in which the Texas Department of Health originally licensed the beds that are being proposed for Medicaid participation. The primary selection process will be completed on September 25, 1992. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 80%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

County Number	County Name	Number of Months Over	Number of Months					
			Jan	Feb	Mar	Apr	May	Jun
009	Bailey	5	88.5	93.0	91.4	91.2	94.3	94.6

Issued in Austin, Texas, on August 7, 1992.

TRD-9210828 Nancy Murphy
 Agency Liaison, Policy and Document Support
 Texas Department of Human Services

Filed: August 7, 1992

Railroad Commission of Texas

Issuance of Request for Proposal

Analysis of the Economic Costs and Benefits of Regulatory Differences Between National and Texas Standards on the LP Gas Industry in Texas

General. The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas (commission) was established pursuant to Senate Bill 2505 (passed by the 72nd Legislature, Regular Session). The purpose of the division is to provide research, education, and marketing for Texas-approved alternative fuels, specifically propane.

Because propane is a clean Texas fuel, its increased use in premium-price markets helps the Texas economy and environment. The commission seeks to ensure that its regulatory and marketing functions for propane are not unnecessarily in conflict. Therefore, the commission proposes to analyze the economic costs and benefits of the Texas Railroad Commission/LP-Gas Division regulations which differ from widely adopted national standards. The study shall use as a baseline the National Fire Prevention Association handbooks Numbers 52, 54, and 58; ASME tank codes and other LP-Gas standards which are widely adopted nationally. The costs and benefits will be calculated for the LP-Gas industry, consumers, and the state economy. The study will also identify differing commission regulations among the Texas-approved alternative fuels and compare the economic costs and benefits of the differences.

AFRED staff has determined that such information does not currently exist, and is issuing a request for proposals (RFP) to analyze the economic costs and benefits of regulatory differences between national and Texas standards on the LP-Gas industry in Texas.

The contractor will organize the project under the direction of the Assistant Director for Marketing in AFRED. The contractor will be required to complete all work specified in the RFP by six months after the contract is awarded. The contract will not be awarded for an amount exceeding \$100,000.

Project Scope. Expected deliverables of this study shall include: an economic cost-benefit analysis of additional costs and benefits provided by the Texas Railroad Commission LP-Gas Division regulations which differ from widely adopted national standards. The costs and benefits will be calculated for the LP-Gas industry, consumers, and the state economy; study to also determine how many (if any) propane users (homebuilders, contractors, etc.) and equipment manufacturers are encouraged or intimidated by Texas' additional safety regulations and quantify the economic costs and benefits to the state, if any are found; identify differing commission regulations among the Texas-approved alternative fuels and compare the economic costs and benefits of the differences.

Proposer Requirements. Potential offerors must demonstrate their ability to provide the consultant services required. Each potential offeror must show it has experience in the field of natural gas or propane regulatory analysis and cost-benefit studies. Potential offerors must provide the agency with a proposal addressing its qualifications to accomplish this project.

The proposal must include the following information: introduction of the consultant; description of the consultant; number of proposed staff; total project cost, based on not-to-exceed calculations; description of two projects in which the consultant performed the same or similar project in the last two years.

"Similar project" is defined as having performed tasks similar to those required by the RFP. Include a clear description of the project, the cost of the project, the duration of the project, including whether the project was completed early, on-time or late.

Consultant must identify the resources (other than personnel) it will bring to the project (experience with technologies, years in business, years performing this service and analysis tools) and the proposed fee charged for the services provided. The consultant must discuss at length any existing or proposed relationship it has with any entity which may pose a potential conflict of interest as it would relate to performing services under this contract. Consultant must outline any services which it is currently performing for the commission. The study is expected to be completed within six months of contract award.

The proposal must be delivered to the address in this notice. Consultant is solely responsible for any late or misdelivered mail; proposals must be addressed to the contact person and delivered to the office listed in this notice.

The consultant will provide all the information requested herein, in the prescribed format. The consultant is solely responsible for demonstrating its ability to provide the services. No amendments or additions to the response may be made after the due date and time. Responses may be withdrawn prior to the due date and time upon the identity of an authorized representative of the respondent, prior to the due date and time upon submission and signed receipt.

A review committee established by the commission will evaluate each response and assess the capability of the consultant to provide the service. The consultant must also provide the information in the format requested and use the outlined submission procedure.

Closing Date. Proposals must be submitted no later than September 24, 1992, at 3 p.m. Proposals received after this date and time will be disqualified. No exceptions.

Prohibitions. The awarded consultant will be prohibited from bidding on any work resulting from completion of this contract.

Contact Person for RFP. A complete copy of the RFP may be obtained from Heather Ball, Assistant Director for Marketing, Alternative Fuels Research and Education Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Award Criteria. Selection of the consultant will be based on the demonstrated competence, experience, knowledge, and qualifications in the areas of service desired and the reasonableness of the proposed fee. All responses will be subject to evaluation by a committee established by the commission to select the consultant that most clearly meets the requirements of the RFP. A contractor may be asked to provide clarification to its response, which may include making oral presentation(s) of its response, prior to final selection.

The commission reserves the right to accept or reject any or all responses submitted. The commission is under no legal or other requirements to execute a resulting contract on the basis of this notice nor the distribution of the RFP.

Neither this notice nor the RFP commit the commission to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on August 5, 1992.

TRD-9210694 Nolan Ward
Hearings Examiner Legal Division, General
Law
Railroad Commission of Texas

Filed: August 5, 1992

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Issuance of Request for Proposal Analysis of Ratebased Energy Utility Incentives

General. The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas (commission) was established pursuant to Senate Bill 2505 (passed by the 72nd Legislature, Regular Session). The purpose of the division is to provide research, education and marketing for Texas-approved alternative fuels, specifically propane.

The retail propane industry consists of approximately 1,800 independent dealers. Its principal competitors in many of its premium-price markets are regulated monopolies, which are able to spread some of their marketing costs over their entire captive customer base. The division needs to identify and quantify which of these marketing costs are currently being rate-based by utilities in Texas, and analyze whether they constitute a competitive disadvantage to independent propane dealers. AFRED staff has determined that such information does not currently exist, and is issuing a request for proposals (RFP) to analyze regulated utilities' use of rate-basing certain costs which place propane dealers at a competitive disadvantage. The contractor will organize the project under the direction of the Assistant Director for Marketing in AFRED. The contractor will be required to complete all work specified in the RFP by six months after the contract is awarded. The contract will not be awarded for an amount exceeding \$30,000.

Project Scope. Expected deliverables of this study shall include: identification of incentives which regulated utilities in Texas are allowed to build into their ratebase which promote the use of their energy source; identification of incentives which regulated utilities in other states are allowed to build into their ratebase which promote the use of their energy source; identification of incentives under consideration by regulated utilities to build into their ratebase which promote the use of their energy source; economic analysis of the impact of such rate-based incentives on consumers and sellers of competing fuels, particularly propane.

The economic analysis will be conducted in standard utility cost-benefit terms, and will measure the impact on utility participants and non-participants, as well as the public as a whole. Utility participants and non-participants should be stratified by broad income levels.

Proposer Requirements. Potential offerors must demonstrate their ability to provide the consultant services required. Each potential offeror must show it has experience in the field of utility rate analysis and utility cost-benefit studies. Potential offerors must provide the agency with a proposal addressing its qualifications to accomplish this project.

The proposal must include the following information: introduction of the consultant; description of the consultant; number of proposed staff; total project cost, based on not-to-exceed calculations; description of two projects in which the consultant performed the same or similar project in the last two years.

"Similar project" is defined as having performed tasks similar to those required by the RFP. Include a clear description of the project, the cost of the project, the duration of the project, including whether the project was completed early, on-time, or late.

Consultant must identify the resources (other than personnel) it will bring to the project (experience with technologies, years in business, years performing this service and analysis tools) and the proposed fee charged for the services provided. The consultant must discuss at length any existing or proposed relationship it has with any entity which may pose a potential conflict of interest as it would relate to performing services under this contract. Consultant must outline any services which it is currently performing for the commission. The study is expected to be completed within six months of contract award. The proposal must be delivered to the address in this notice. Consultant is solely responsible for any late or misdelivered mail; proposals must be addressed to the contact person and delivered to the office listed in this notice.

The consultant will provide all the information requested herein, in the prescribed format. The consultant is solely responsible for demonstrating its ability to provide the services. No amendments or additions to the response may be made after the due date and time. Responses may be withdrawn prior to the due date and time upon the identity of an authorized representative of the respondent, prior to the due date and time upon submission and signed receipt.

A review committee established by the commission will evaluate each response and assess the capability of the consultant to provide the service. The consultant must also provide the information in the format requested and use the outlined submission procedure.

Closing Date. Proposals must be submitted no later than September 24, 1992, at 3 p.m. Proposals received after this date and time will be disqualified. No exceptions.

Prohibitions. The awarded consultant will be prohibited from bidding on any work resulting from completion of this contract.

Contact Person for RFP. A complete copy of the RFP may be obtained from Heather Ball, Assistant Director for Marketing, Alternative Fuels Research and Education Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Award Criteria. Selection of the consultant will be based on the demonstrated competence, experience, knowledge and qualifications in the areas of service desired and the reasonableness of the proposed fee. All responses will be subject to evaluation by a committee established by the commission to select the consultant that most clearly meets the requirements of the RFP. A contractor may be asked to provide clarification to its response, which may include making oral presentation(s) of its response, prior to final selection.

The commission reserves the right to accept or reject any or all responses submitted. The commission is under no legal or other requirements to execute a resulting contract on the basis of this notice nor the distribution of the RFP.

Neither this notice nor the RFP commit the commission to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on August 5, 1992.

TRD-9210695

Nolan Ward
Hearings Examiner Legal Division, General
Law
Railroad Commission of Texas

Filed: August 5, 1992

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**Issuance of Request for Proposal
Baseline Study of Propane Use**

General. The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas (commission) was established pursuant to Senate Bill 2505 (passed by the 72nd Legislature, Regular Session). The purpose of the division is to provide research, education and marketing for Texas-approved alternative fuels, specifically propane.

The division needs reliable baseline data on propane consumption in premium-price markets to evaluate the success of its marketing programs. AFRED staff has determined that such data does not currently exist, and is issuing a request for proposals (RFP) to establish a baseline for Texas. In addition, the baseline study will identify trends in the premium-price markets in Texas and analyze policies that could mitigate disruptions in the supply and price of propane.

The contractor will organize the project under the direction of the assistant director for Marketing in AFRED. The contractor will be required to complete all work specified in the RFP by six months after the contract is awarded. The contract will not be awarded for an amount exceeding \$250,000.

Project Scope. Expected deliverables of this study shall include: development of a weather-normalized methodology which can be replicated each year to measure propane usage and market share by premium price market. The markets to be measured include, but need not be limited to, residential, vehicular, commercial, industrial, agricultural, recreational, locomotive and small engines; development of an annual retail price survey of Texas by region which can be replicated each year for various premium price markets. Regions shall be designated by the commission, and will not exceed 12; analysis of trends in propane usage in premium price markets and identification of factors which may influence those trends over the next ten years; identification and quantification of growth premium price markets for propane in Texas over the next 10 years. Indicate whether the markets are weather-related; analysis of propane availability under current market conditions and under specified higher market prices; comparison with availability of other alternative fuels under these scenarios. Analysis will include costs of synthesizing propane from natural gas versus compressing or liquefying it under various electricity price scenarios; analysis of the impact of futures markets on propane supply and identification of the most cost-effective means for retail dealers to secure steady supplies at reasonable prices (e.g., are dealers large enough to deal in futures markets, should they form coops, etc.); identification of the causes of disruptions in the supply and fluctuations in the price of propane; recommendations on whether the commission should develop conservation and distribution plans to minimize the fre-

quency and severity of disruptions in the supply of propane. The recommendations should include an evaluation of policies such as minimum storage levels and required reporting by petrochemical companies on amounts they have in storage as well as an evaluation of the impact of interruptible natural gas contracts when propane is used as a standby fuel; recommendations for members to an advisory panel to provide annual Texas propane price and availability forecasts to the commission.

Proposer Requirements. Potential offerors must demonstrate their ability to provide the consultant services required. Each potential offeror must show it has experience in the field of propane supply and demand analysis. Potential offerors must provide the agency with a proposal addressing its qualifications to accomplish this project

The proposal must include the following information: introduction of the consultant; description of the consultant; number of proposed staff; total project cost, based on not-to-exceed calculations; description of two projects in which the consultant performed the same or similar project in the last two years.

"Similar project" is defined as having performed tasks similar to those required by the RFP. Include a clear description of the project, the cost of the project, the duration of the project, including whether the project was completed early, on-time or late.

Consultant must identify the resources (other than personnel) it will bring to the project (experience with technologies, years in business, years performing this service and analysis tools) and the proposed fee charged for the services provided. The consultant must discuss at length any existing or proposed relationship it has with any entity which may pose a potential conflict of interest as it would relate to performing services under this contract. Consultant must outline any services which it is currently performing for the commission. The study is expected to be completed within six months of contract award. The proposal must be delivered to the address in this notice. Consultant is solely responsible for any late or misdelivered mail; proposals must be addressed to the contact person and delivered to the office listed in this notice.

The consultant will provide all the information requested herein, in the prescribed format. The consultant is solely responsible for demonstrating its ability to provide the services. No amendments or additions to the response may be made after the due date and time. Responses may be withdrawn prior to the due date and time upon the identity of an authorized representative of the respondent, prior to the due date and time upon submission and signed receipt.

A review committee established by the commission will evaluate each response and assess the capability of the consultant to provide the service. The consultant must also provide the information in the format requested and use the outlined submission procedure.

Closing Date. Proposals must be submitted no later than September 24, 1992, at 3 p.m. Proposals received after this date and time will be disqualified. No exceptions.

Prohibitions. The awarded consultant will be prohibited from bidding on any work resulting from completion of this contract.

Contact Person for RFP. A complete copy of the RFP may be obtained from Heather Ball, Assistant Director for Marketing, Alternative Fuels Research and Education Di-

vision, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Award Criteria. Selection of the consultant will be based on the demonstrated competence, experience, knowledge, and qualifications in the areas of service desired and the reasonableness of the proposed fee. All responses will be subject to evaluation by a committee established by the commission to select the consultant that most clearly meets the requirements of the RFP. A contractor may be asked to provide clarification to its response, which may include making oral presentation(s) of its response, prior to final selection.

The commission reserves the right to accept or reject any or all responses submitted. The commission is under no legal or other requirements to execute a resulting contract on the basis of this notice nor the distribution of the RFP.

Neither this notice nor the RFP commit the commission to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on August 5, 1992.

TRD-9210692 Nolan Ward
 Hearings Examiner Legal Division, General
 Law
 Railroad Commission of Texas

Filed August 5, 1992

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Issuance of Request for Proposal Market Study of Propane

General. The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas (commission) was established pursuant to Senate Bill 2505 (passed by the 72nd Legislature, Regular Session). The purpose of the division is to provide research, education and marketing for Texas-approved alternative fuels, specifically propane.

Prior to implementation of a statewide propane marketing campaign, the division must assess existing customer awareness and acceptance of propane in its premium price markets in Texas. In addition, the division must identify cost-effective means to reach key decision-makers in each market. The division also recognizes the need for more technical and environmental research and development on propane and seeks to identify national and international research funding partners who can leverage AFRED research monies.

AFRED staff has determined that such information does not currently exist, and is issuing a request for proposals (RFP) to assess current customer awareness and concerns about propane in Texas premium-price markets. In addition, the study will identify key decision-makers in these markets, and identify likely funding partners for propane research. The contractor will organize the project under the direction of the Assistant Director for Marketing in AFRED. The contractor will be required to complete all work specified in the RFP by six months after the contract is awarded. The contract will not be awarded for an amount exceeding \$81,000.

Project Scope. Expected deliverables of this study shall include.

Market Study. The study will provide a conditional forecast on sales and contribution (margin) for each premium price market for propane. It will analyze whether competition is increasing/decreasing/staying the same and what the overall market is doing (increasing/decreasing/staying the same). It will quantify the existing and growth market potential for propane. The markets to be studied include:

Residential Fuel: Key decisionmakers include: Custom home builders, spec home builders, manufactured housing builders, rural, and exurban residents (both new home buyers and residents who could switch from all-electric to propane); large-scale all-electric home builders; architects and architectural students. .

Commercial Fuel: Key decisionmakers include: Contractors for restaurants, car washes, and coin-operated laundries in smaller communities surrounding urban areas.

Industrial Fuel: Key decisionmakers include: Plant managers with operations requiring lift trucks, brazing and melting, flame cutters, metal cutting, temporary heating, vulcanizing rubber, cement drying, and other drying operations, shrink-wrapping; construction heaters, metallurgical furnaces.

Agricultural: Key decisionmakers include: Agricultural operators with brooder houses, cotton gins, peanut dryers, dairy barns, tractor fuel, irrigation pumps, flame cultivation.

Vehicle Fuel: Key decisionmakers include: Chairpersons, executive directors, elected and appointed officials of state agencies and transit authorities; local elected officials, school superintendents and school boards (both mandated and non-mandated districts), fleet operators, fleet drivers, transit and school bus riders and their parents (PTOs); CEOs and planning directors at large privately owned fleets in non-attainment (urban) areas.

New Markets with growth potential such as:

Potential Growth Market	Principal competitor
Barbecue Grills	Charcoal
Agricultural, e.g., confinement hog barns	Electricity or natural gas
Roofing Tar	Diesel
Soil Reclamation, e.g., sterilizing dirt around leaking underground storage tanks	Diesel
Backup for Sewer and Water Plant Pumps	Methane gas
Commercial, e.g., services using small engines such as lawn mowers, industrial floor polishers, etc.	Electricity or natural gas
Recreation, e.g., RVs, barbecues, hot air balloons, etc.	Electricity or natural gas
Hot Asphalt	Diesel
Locomotives	Diesel

Report on activities by other states, provinces and private companies to market alternative fuels, particularly propane. The states and provinces should include, but are not limited to, California, Oklahoma, Louisiana, British Columbia, Colorado.

Identify potential research funding partners. As part of the executive interviews with key decision-makers, identify likely research consortium partners and their areas of funding interest. (Residential heat pump, absorption cooling, dedicated automobile engines, etc.)

Proposer Requirement. Potential offerors must demonstrate their ability to provide the consultant services required. Each potential offeror must show it has experience in the field of natural gas or propane marketing and market research and locating co-funders for research projects. Potential offerors must provide the agency with a proposal addressing its qualifications to accomplish this project.

The proposal must include information: introduction of the consultant; description of the consultant; number of proposed staff; total project cost, based on not-to-exceed calculations; description of two projects in which the consultants performed the same or similar project in the last two years. "Similar project" is defined as having performed tasks similar to those required by the RFP. Include a clear description of the project, the cost of the project, the duration of the project, including whether the project was completed early, on-time or late.

Consultant must identify the resources (other than personnel) it will bring to the project (experience with technologies, years in business, years performing this service and analysis tools) and the proposed fee charged for the services provided. The consultant must discuss at length any existing or proposed relationship it has with any entity which may pose a potential conflict of interest as it would relate to performing services under this contract. Consultant must outline any services which it is currently performing for the commission. The study is expected to be

completed within six months of contract award. The proposal must be delivered to the address in this notice. Consultant is solely responsible for any late or misdelivered mail; proposals must be addressed to the contact person and delivered to the office listed in this notice.

The consultant will provide all the information requested herein, in the prescribed format. The consultant is solely responsible for demonstrating its ability to provide the services. No amendments or additions to the response may be made after the due date and time. Responses may be withdrawn prior to the due date and time upon the identity of an authorized representative of the respondent, prior to the due date and time upon submission and signed receipt.

A review committee established by the commission will evaluate each response and assess the capability of the consultant to provide the service. The consultant must also provide the information in the format requested and use the outlined submission procedure.

Closing Date. Proposals must be submitted no later than September 24, 1992 at 3 p.m. Proposals received after this date and time will be disqualified. No exceptions.

Prohibitions. The awarded consultant will be prohibited from bidding on any work resulting from completion of this contract.

Contact Person for RFP. A complete copy of the RFP may be obtained from Heather Ball, Assistant Director for Marketing, Alternative Fuels Research and Education Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Award Criteria. Selection of the consultant will be based on the demonstrated competence, experience, knowledge and qualifications in the areas of service desired and the reasonableness of the proposed fee. All responses will be subject to evaluation by a committee established by the commission to select the consultant that most clearly meets the requirements of the RFP. A contractor may be asked to provide clarification to its response, which may include making oral presentation(s) of its response, prior to final selection.

The commission reserves the right to accept or reject any or all responses submitted. The commission is under no legal or other requirements to execute a resulting contract on the basis of this notice nor the distribution of the RFP.

Neither this notice nor the RFP commit the commission to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on August 5, 1992.

TRD-9210696 Nolan Ward
 Hearings Examiner Legal Division, General
 Law
 Railroad Commission of Texas

Filed: August 5, 1992

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Issuance of Request for Proposal Research Reports on Market Niches for Propane

General. The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas (commission) was established pursuant to Senate Bill 2505 (passed by the 72nd Legislature, Regular Session). The purpose of the division is to provide research, education

and marketing for Texas-approved alternative fuels, specifically propane.

In order to quickly and effectively communicate the niche market research results to the propane industry, the division proposes to produce a series of five-10 page reports on the market potential of various niche premium price markets for propane in Texas.

The reports will include a quantification in terms of dollars and gallons of the existing market and the growth potential; identification of barriers and opportunities, identification of potential customers, and a description of successful marketing approaches for these niches. Niche markets to be researched will be specified by the commission.

AFRED staff has determined that such information does not currently exist, and is issuing a request for proposals (RFP) to provide a series of research reports on market niches for propane.

The contractor will organize the project under the direction of the assistant director for Marketing in AFRED. The contractor will be required to complete all work specified in the RFP by six months after the contract is awarded. The contract will not be awarded for an amount exceeding \$30,000.

Project Scope. Expected deliverables of this study shall include: a series of five-10-page reports on various premium price niche markets for propane in Texas. The reports will include a quantification in terms of dollars and gallons of the existing market and the growth potential; identification of barriers and opportunities, identification of potential customers, and a description of successful marketing approaches for these niches. Niche markets to be researched will be specified by the commission; a list of sources contacted during the course of each report; a camera-ready copy and a computer diskette containing the final report; a copy of any background materials and/or reports gathered during the report research.

Proposer Requirements. Potential offerors must demonstrate their ability to provide the consultant services required. Each potential offeror must show it has experience in the field of natural gas or propane niche market analysis. Potential offerors must provide the agency with a proposal, addressing its qualifications to accomplish this project.

The proposal must include the following information: introduction of the consultant; description of the consultant; number of proposed staff; total project cost, based on not-to-exceed calculations; description of two projects in which the consultant performed the same or similar project in the last two years.

"Similar project" is defined as having performed tasks similar to those required by the RFP. Include a clear description of the project, the cost of the project, the duration of the project, including whether the project was completed early, on-time or late.

Consultant must identify the resources (other than personnel) it will bring to the project (experience with technologies, years in business, years performing this service and analysis tools) and the proposed fee charged for the services provided. The consultant must discuss at length any existing or proposed relationship it has with any entity which may pose a potential conflict of interest as it would relate to performing services under this contract. Consultant must outline any services which it is currently performing for the commission. The study is expected to be

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

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PAGES 5617 - 5680 should be 5717 - 5780

FOLDER #2:

PAGES 5681 - 5764 should be 5781 - 5864

FOLDER #3:

PAGES 5765 - 5962 should be 5865 - 5962